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APPENDIX

Supreme Court, U. S.
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Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1598

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

—v.—

BELL AEROSPACE COMPANY, DIVISION OF TEXTRON, INC.,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED MAY 29, 1973
CERTIORARI GRANTED OCTOBER 9, 1973

Supreme Court of the United States

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INDEX

	Page
Relevant Docket Entries	1
Proceedings before the National Labor Relations Board in Case No. 3-RC-4987	3
Witnesses:	
Peter J. Wacks	
Direct Examination	9
Cross Examination	15
Recross Examination	17
Recross Examination	18
Fred Seitz	
Direct Examination	21
Cross Examination	46
Cross Examination	58
Cross Examination	68
Cross Examination	69

Page

Proceedings before the National Labor Relations Board in Case No. 3-RC-4987—Continued

Witnesses—Continued

Harry H. Cleveland
Direct Examination ____ 70
Cross Examination ____ 76
Redirect Examination ____ 81

John R. Miranda
Direct Examination ____ 87
Cross Examination ____ 120
Cross Examination ____ 121

Harry White
Direct Examination ____ 123
Cross Examination ____ 131
Cross Examination ____ 131
Recross Examination ____ 131

Edward Nolan
Direct Examination ____ 132
Cross Examination ____ 157
Redirect Examination ____ 160

Harry W. Cleveland
Direct Examination ____ 161
Cross Examination ____ 180

Peter J. Wacks
Direct Examination ____ 183
Cross Examination ____ 187
Cross Examination ____ 188
Redirect Examination ____ 191
Recross Examination ____ 192

Employer's Exhibits:
No. 3 ____ 197
No. 4 ____ 198
No. 5 ____ 199
No. 6 ____ 200
No. 7 ____ 201
No. 8 ____ 205
No. 9 ____ 207
No. 10 ____ 208
No. 11 ____ 209
No. 12 ____ 211
No. 13 ____ 213

Page

Excerpts from Proceedings before the National Labor Relations Board in Case No. 3-RC-4987—Continued

Employer's Exhibits—Continued

No. 14 ... 215
No. 15 ... 217
No. 16 ... 218
No. 17 ... 219
No. 19 ... 221
No. 20 ... 223
No. 21 ... 225
No. 22 ... 230
No. 23 ... 232

Union's Exhibits:

No. 1 ... 234
No. 11 ... 235
No. 12 ... 241
No. 13 ... 253
No. 16 ... 262
No. 17 ... 264
No. 18 ... 270

Petition for Election ... 273

Tally of Ballots ... 277

Employer's request for Reconsideration ... 278

Charge against Employer ... 280

Regional Director's Complaint and Notice of Hearing ... 282

Employer's Answer (with Exhibits 1 through 4 attached) ... 288

Order of Supreme Court granting certiorari ... 299

(The following documents are not reprinted in this appendix since they are already printed in the appendix to the petition: (1) Decision of the Court of Appeals; (2) Judgment of the Court of Appeals; (3) Decision and Order of the Board in Case No. 3-CA-4695; (4) Decision and Direction of Election in Case No. 3-RC-4987; (5) Supplemental Decision and Certification of Representative and (6) Order denying motion for reconsideration of Decision and Direction of Election.)

CHRONOLOGICAL LIST OF REVELANT DOCKET ENTRIES

In the Matter
of
BELL AEROSPACE CO. DIV. OF TEXTRON, INC.

Case Nos.: 3-RC-4987 and 3-CA-4695

3-RC-4987

7.30.70	Petition filed.
7.18.70	Acting Regional Director issued Notice of Representation Hearing.
8.28.70	Hearing opened.
9. 3.70	Hearing closed.
10.23.70	Regional Director's Order Transferring Representation Case to the Board, dated.
5.20.71	Decision and Direction of Election issued by the National Labor Relations Board.
6.16.71	Notice of Election to be held.
6.16.71	Tally of Ballots issued.
6.16.71	Certification on Conduct of Election, dated.
6.17.71	Employer's Objections to the Election, dated.
6.28.71	Regional Director's Report on Objections, dated.
7. 8.71	Employer's Exceptions to the Regional Director's Report on Objections, received.
8.12.71	Supplemental Decision and Certification of Representative issued by the Board.

8.17.71 Employer's Request for Reconsideration, dated.

5. 1.72 Board's Order Denying Motion, dated.

3-CA-4695

12. 2.71 Charge filed.

12.21.71 Complaint and Notice of Hearing, dated.

1. 3.72 Employer's Answer, received.

1.28.72 General Counsel's Motion for Summary Judgment and Issuance of Board's Decision and Order, dated.

2. 2.72 Regional Director's Order Postponing Hearing Indefinitely, dated.

2. 9.72 Board's Order Transferring Proceeding to the Board and Notice to Show Cause, dated.

3. 6.72 Employer's Brief in Opposition to Motion for Summary Judgment and In Support of Petition for Reconsideration of the Board's Previous Order, received.

5.30.72 Decision and Order issued by the National Labor Relations Board, granting *inter alia* the General Counsel's Motion for Summary Judgment.

10. 9.73 Order of Supreme Court granting certiorari.

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case No. 3-RC-4987

BELL AEROSPACE CO., DIVISION OF TEXTRON, INC.
Employer

and

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AMALGAMATED LOCAL 1286

Petitioner

NLRB Hearing Room,
120 Delaware Avenue,
Buffalo, New York,
Friday, August 28th, 1970.

The above-entitled matter came on for hearing at 10:00 o'clock, a.m., pursuant to notice.

BEFORE:

JAMES PALERMO, Hearing Officer.

APPEARANCES:

HORACE C. WINCH, Esq., Ohlin, Damon, Morey, Sawyer & Moot,
&
JAMES N. SCHMIT, Esq., 1800 Liberty Bank Building, Buffalo, New York, appearing on behalf of the Employer.

RAY LARACY, Staff Representative, 16 Commerce Drive, Cranford, New Jersey 07062, appearing on behalf of the Petitioner.

[3]

PROCEEDINGS

HEARING OFFICER PALERMO: On the record. This is a formal hearing in the matter of Bell Aero-

space Co., Division of Textron, Inc., Case No. 3-RC-4987, before the National Labor Relations Board.

The Hearing Officer appearing for the National Labor Relations Board is James J. Palermo.

All parties have been informed of procedure at formal hearings before the Board by service of a statement of standard procedure with the Notice of Hearing.

I have additional copies of this statement for distribution if any of the parties wishes more.

Will Counsel please state their appearances for the record? For Petitioner?

MR. LARACY: Ray Laracy, L-a-r-a-c-y, International Representative for the UAW.

HEARING OFFICER: For the Employer?

MR. WINCH: Ohlin, Damon, Morey, Sawyer & Moot, Horace C. Winch and James C. Schmit, S-c-h-m-i-t, of counsel, and Peter J. Wacks, Vice-President of the Company.

HEARING OFFICER: Are there any other appearances?

(No response)

HEARING OFFICER: Are there any other persons, parties or labor organizations in the hearing room at this time who claim an interest in the proceedings?

[4] (No response)

HEARING OFFICER: I now propose to receive into evidence the formal papers. These have been marked for identification as Board's Exhibit 1(a) through 1(d) inclusive, Exhibit 1(d) being an index and description of the entire exhibit.

(The document above-referred to was marked Board's Exhibit 1(a) through 1(d) for identification)

HEARING OFFICER: The exhibit has been shown to the parties. Are there any objections?

MR. WINCH: None for the Company.

MR. LARACY: No objection.

HEARING OFFICER: There being no objection, Board's Exhibit 1(a) through 1(d) is received into the record.

(The document above-referred to, heretofore marked Board's Exhibit 1(a) through 1(d), was received into evidence)

HEARING OFFICER: Are there any motions to intervene in these proceedings to be submitted to the Hearing Officer at this time?

(No response)

HEARING OFFICER: Mr. Laracy, is the correct name of the Petitioner that which appears on the petition in this case, being the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, [5] Amalgamated Local 1286?

MR. LARACY: Yes, that is right.

HEARING OFFICER: Is it possible to stipulate that International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Amalgamated Local 1286, is a labor organization within the meaning of the National Labor Relations Board Act as amended?

Do you stipulate, Mr. Winch, on behalf of the Company?

MR. WINCH: Yes.

HEARING OFFICER: Mr. Laracy?

MR. LARACY: Yes.

HEARING OFFICER: The stipulation is received.

Will the Company please state its full and correct name for the record?

MR. WINCH: Bell Aerospace Company, C-o-m-p-a-n-y, Division of Textron, T-e-x-t-r-o-n, Inc.

There is no comma after Textron.

HEARING OFFICER: Fine. Mr. Winch, I believe you also indicated you wanted to explain briefly the name change of the company?

MR. WINCH: Yes.

Some of the exhibits which will be offered into evidence are headed by the name of Bell Aerosystems. Bell Aerosystems Company was a division of Bell Aerospace Corporation prior to January 1st, 1970. Bell Aerospace [6] Corporation was a subsidiary of Textron Inc. As of January 1st, 1970 Bell Aerospace Corporation ceased

to exist and Bell Aerosystems Company became Bell Aerospace Company Division of Textron Inc., the Employer in this proceeding.

HEARING OFFICER: Are there any objections to having the petition and other formal papers amended so that the name of the Employer will correctly appear in the caption thereon as Bell Aerospace Company Division of Textron Inc.?

MR. LARACY: No objection from the Petitioner.

HEARING OFFICER: And I assume there's none from the Company?

MR. WINCH: No, of course not.

HEARING OFFICER: Fine.

Mr. Winch, approximately how many employees are located at the plant here involved?

MR. WINCH: 4637.

HEARING OFFICER: Approximately how many employees are in the department that is concerned in this petition?

MR. WINCH: 25.

HEARING OFFICER: Is it possible to stipulate that Bell Aerospace Company Division of Textron Inc. is a Delaware Corporation having its main place of business in the Town of Wheatfield, New York?

MR. WINCH: No. Bell Aerospace Company Division of Textron Inc. is not a corporation. It is a Division of [7] Textron Inc.

HEARING OFFICER: Okay. Off the record.

(Discussion off the record)

HEARING OFFICER: On the record.

Having been corrected by Mr. Winch, now would it be possible to stipulate Bell Aerospace Company Division of Textron Inc. is a Division of Textron Inc.—

MR. WINCH: Wait.

HEARING OFFICER: Off the record.

(Discussion off the record)

HEARING OFFICER: On the record.

Is it possible to stipulate that Bell Aerospace Com-

pany Division of Textron Inc. is a Division of Textron Inc., which is a Delaware Corporation—

MR. WACKS: Textron being a Delaware Corporation.

MR. WINCH: That's right.

HEARING OFFICER: Bell Aerospace Company Division of Textron Inc. is engaged in the manufacture of rocket engines and electronic equipment with gross revenues annually well in excess of $50,000. During the past twelve months the company received goods valued in excess of $50,000 from companies outside the State of New York. The company is engaged in commerce within the meaning of the National Labor Relations Board Act as amended.

MR. WINCH: Correct.

[8] HEARING OFFICER: Do you so stipulate, Mr. Winch, on behalf of the company?

MR. WINCH: Yes.

HEARING OFFICER: Mr. Laracy?

MR. LARACY: Yes.

HEARING OFFICER: The stipulation is received.

Does the Company decline at this time to recognize the Petitioner as exclusive bargaining agent for the employees in the unit petitioned for until such time as it is certified by the Board?

MR. WINCH: Yes.

HEARING OFFICER: Do any of the parties contend there's a contract bar to an election in this case?

MR. WINCH: No.

MR. LARACY: No.

HEARING OFFICER: Off the record.

(Discussion off the record)

HEARING OFFICER: On the record.

Mr. Laracy, I am now going to read the unit claimed by the petitioner and ask whether you wish to amend the unit at this time. The unit description reads: "Included All buyers in purchasing and procurement, department 121; excluded All production and maintenance employees, all office clerical employees, professional employees, guards and supervisors as defined in the Act."

[9] Mr. Laracy, do you wish to amend the petition?

MR. LARACY: Yes. I would like to add something to the inclusions. After "Department 121" put in parenthesis "Buyer, Class 2" and "Buyer, Senior." They are the two occupations that we are petitioning for.

HEARING OFFICER: Mr. Winch, does the Company have any objection to the petition being amended?

MR. WINCH: No objection.

HEARING OFFICER: Hearing no objection then the amendment to the petition is allowed.

Mr. Winch, briefly what is the position of the Company as to the appropriateness of this unit?

MR. WINCH: The Company's position is that this is not an appropriate unit for purposes of collective bargaining.

HEARING OFFICER: On what basis, sir?

MR. WINCH: That the employees within the named unit are managerial employees and, secondarily, that they have no community of interest with the other members of that Amalgamated Union.

HEARING OFFICER: Mr. Laracy, what is the Union's position?

MR. LARACY: The Union's position is that the buyers we are petitioning for are employees as defined by the Act and that they form an appropriate unit.

HEARING OFFICER: Okay. Let's begin with our testimony.

[10] Mr. Winch, would you like to proceed?

MR. WINCH: The Hearing Officer has requested us to show the organization within which the unit is situated as I understand.

HEARING OFFICER: Yes.

MR. WINCH: For that purpose I will swear Mr. Wacks.

Whereupon,

PETER J. WACKS

was called as a witness by and on behalf of the Employer and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Winch) Would you state your full name for the record, please?

A. Peter J. Wacks.

Q. Mr. Wacks, you are an employee of the Company?

A. I am.

Q. In what capacity?

A. Vice-President, Industrial Relations Department.

Q. How long have you held that position?

A. About fourteen years.

MR. WINCH: Would you please mark this paper for identification?

(The document above-referred to was marked Employer's Exhibit No. 1 for identification)

[11] HEARING OFFICER: For purposes of identification, Employer's Exhibit No. 1 is an organizational chart for the structure of the Bell Aerospace Company Division of Textron Inc. This chart is dated April 20th, 1970.

MR. WINCH: Mr. Wacks, would you refer to—

HEARING OFFICER: One other thing might be added about the chart. It is only for the manufacturing department.

Q. (By Mr. Winch) Mr. Wacks, this exhibit shows at the top Mr. Nochisaki as Vice-President of Manufactuirng. To whom does he report?

A. Mr. Nochisaki, who is a Vice-President, reports to the Executive Vice-President, Mr. Richard Hurst. Mr. Hurst being an Executive Vice-President reports to the Secretary of the Company, Mr. William Gisel.

Q. Does Exhibit 1 show the place in the organization of the procurement department and the Director of procurement?

A. Yes, it does. On the right-hand side of the chart you will notice a block designated Procurement Section. Mr. F. M. Seitz is the Director of that particular department. That department is several departments of the overall manufacturing department of the Company.

Q. Does Exhibit 1 also show the location of the various units of the Amalgamated Union 1286?

A. Yes. We have an Amalgamated Union known as 1286 constituted in four different units. One is the estimating [12] unit, one is the so-called production engineering technical association, and one is production control, and one is the mold loft unit.

On this exhibit there is reflected in figures, the number of employees in each of these four units and the department wherein these employees are assigned. For instance, under the manufacturing industrial engineering and estimating group, headed by Mr. Lotz, there are 20 estimators in that particular department. That is the estimating unit. Then in the manufacturing engineering department, under Mr. Hussa, there are 46 PETA employees assigned to that department and two members of the loft unit.

HEARING OFFICER: Excuse me. What is "PETA"?

THE WITNESS: Production Engineering Technical Association.

HEARING OFFICER: And Loft?

THE WITNESS: Just that, an employee of the Loft unit of the Amalgamated 1286. That is the Loft unit. There are Loft men involved.

HEARING OFFICER: Explain what a Loft man is?

THE WITNESS: I don't exactly know what they do.

Then in the plant engineering section there are three members of the production engineering technical association unit assigned to that particular department. Then under the manufacturing control department under Mr. Kelly there [13] are forty-one production control employees assigned to that department. That constitutes one of the four units of the Amalgamated 1286.

HEARING OFFICER: May I ask some questions about this organization chart, Mr. Winch?

MR. WINCH: Will you let me finish questioning this witness? I have one more exhibit I would like to get into evidence before you question him.

Please mark this proposed exhibit for identification.

(The document above-referred to was marked Employer's Exhibit No. 2 for identification)

MR. WINCH: First let me offer into evidence, Exhibit No. 1.

MR. LARACY: No objection.

HEARING OFFICER: It is admitted into evidence.

(The document above-referred to heretofore marked Employer's Exhibit No. 1, was received into evidence)

Q. (By Mr. Winch) Now, I will have to look at the map the witness has, I guess because I haven't another copy for myself.

HEARING OFFICER: Excuse me. Employer's Exhibit No. 2, if I understand it correctly is a floor plan of your—

THE WITNESS: A floor plan of the Wheatfield Plant. I want to point out, so that it will not be confusing, the right-hand side of this plan is the mezzanine floor [14] which is over and above the first floor to the left.

HEARING OFFICER: I see. And, Mr. Winch, so that we keep everything clear, I assume you are entering this to show that the people in Department 121 work away from other employees; is that correct?

MR. WINCH: Yes, to show the location of the people in Department 121 procurement and to show the location of the various units of the petitioning union.

HEARING OFFICER: Okay.

Q. (By Mr. Winch) Now, referring to Exhibit 2 for identification, Mr. Wacks, there is an area marked "Procurement." How do you describe that particular building?

A. Well, that building is part of the administration building, what we refer to as the "Engineering Building", administration building. That area marked "Procurement" is the office space, the office area where the buyers are located and where they do their work.

HEARING OFFICER: Is this a separate building in which they work?

THE WITNESS: No, it's pretty much—

HEARING OFFICER: It's an office?

THE WITNESS: It's an office but there is a lane between this building where procurement is and the

main plant. If you want to call that a separate building I guess you can.

[15] HEARING OFFICER: Are they connected?

THE WITNESS: They are connected by appropriate bridges on the second floor, but there is a roadway or areaway between that building and the main plant.

Q. (By Mr. Winch) Now, when you refer to the main plant, is that the building directly above the one where procurement is situated, directly to the north as shown by the directional in the upper-left corner of the plant?

A. That's the so-called main plant or manufacturing area or shop area as we know it.

Q. That's where the production work is done?

A. That's where the production work is done; that's correct.

Q. Now, there is a—

A. I might point out to the left of this area where it's marked "Procurement" all the administrative offices, the President's office and some of the Vice-President's offices are located to the left. And then in the area where it is marked "Procurement" it's primarily all office area.

Q. Now, there is an area colored blue which says, "1286 Mold Loft." Is that in the factory building?

A. That is the factory building on the first floor. It is the area where the mold loft personnel—and there's only two in that particular bargaining unit at the present time—are assigned.

Q. You have already testified to the fact that the area [16] shown on the right-lower portion of the map where there are areas colored in green, red and yellow are on the mezzanine in the factory building?

A. I pointed it out to the Hearing Officer. I don't know if it's in evidence. The right-hand side of this floor map reflects the so-called mezzanine floor in the factory area as distinguished from the office administrative building.

Q. Now, above that particular area on the right-hand part of the map appear the words "This Area Begins Over First Aid". Can you locate that area in the factory

building by reference to the left-hand side of the map where the first aid area is shown?

A. Yes. If you just transpose this right-hand portion of the map and superimpose it over the first aid as marked on the map, all that area on the right-hand side is on the mezzanine end in this particular area shown by the cross or the first aid area.

Q. Now, perhaps I am asking you to explain something self-explanatory, but I would like to have you state for the record what these colored areas on the mezzanine shown in the right-hand portion of the map show as regards the location of the units of the petitioning union?

A. Well, we thought it might be helpful to the Hearing Officer at least to reflect on this map the location of where the people in the Amalgamated Unit of 1286 were located. [17] You will see marked there the estimator unit. You will see also the production control unit where those people are located, and you will see two or three areas there reflecting the location of the production engineering technical association employees.

HEARING OFFICER: Are those other units clerical units?

THE WITNESS: No, they are salaried. They are non-exempt units as far as we are concerned.

HEARING OFFICER: But are they professional or technical?

THE WITNESS: No, they are all non-exempt employees.

Q. (By Mr. Winch) What do you mean?

A. Non-exempt under the definition of the Wage and Hour Act. If they work overtime, over eight hours a day or forty hours a week, they have to be paid overtime.

HEARING OFFICER: Would these be considered production and maintenance units or office people that work in offices?

THE WITNESS: Some do, yes.

HEARING OFFICER: Who wouldn't?

THE WITNESS: Well, I think most of them would be considered office types if we are talking about general

office work. Possibly with the exception of the mold loft people.

Q. (By Mr. Winch) Mr. Wacks, when you speak of these people being non-exempt, the people of 1286, contrast them with the buyers in the unit for which the union is now [18] petitioning.

A. Well, the buyers that we have at Bell Aerospace Company are considered professional pepole. They are considered exempt people under the Wage and Hour Act. We treat them as professionals because we give them certain managerial prerogatives which they exercise, unlike the non-exempt employees. They don't.

This means the buyers do not receive time and a half as such after eight hours work or after forty hours a week. They are treated like any other professional employees or like any other officer in the Company for that matter. They do not receive overtime as such after eight hours a day or forty hours a week.

Q. Are there times when they do work more than eight hours a day or forty hours a week?

A. As far as I know there are. As far as I know, anytime they work overtime if it's casual overtime they do not get paid for that on an overtime basis. If it's a scheduled overtime situation—by "scheduled" I mean for long periods of time. Maybe they anticipate this overtime will last a month or six weeks or two months. Then we call it scheduled overtime. Then these buyers like any other professional employees in the plant, like an engineer or supervisor or anybody like that, they are put on a scheduled overtime basis and at which time they do receive a certain amount of [19] overtime pay. But in certain cases it does not equal time and a half, just sometimes straight time pay.

HEARING OFFICER: Is it possibly time and a half?

THE WITNESS: It all depends on the salary bracket they are in. If they are in a lower salary bracket, within certain limits, sometimes time and a half. But if it's over that, it's straight time.

Q. (By Mr. Winch) That is not a statutory matter?

A. No, that is purely a company policy, company program.

MR. WINCH: Right. That's all the questions I have.
HEARING OFFICER: I have a couple of questions here.

CROSS-EXAMINATION

Q. (By Hearing Officer Palermo) The Department 121 is located in the building that is separated from the main plant area. I notice by looking at the blueprint here that there is in the same building as Department 121 a cafeteria. Who uses this cafeteria?

A. Well, normally it is opened to everybody, but we have two cafeterias. One is in the tunnel or basement of the building.

Q. Of this same building?

A. No, over in manufacturing. It would be under first aid. That cafeteria is normally used by the manufacturing people, the hourly rated people, whereas we try to encourage them to use that tunnel cafeteria so that we can reserve the [20] cafeteria reflected here for our salaried employees.

Now, it doesn't work out that way. There is an intermingling of both hourly and salaried, but generally that's it.

Q. In the same building where 121 is located are the Executive offices?

A. That's right. If you go to the left you will see it's marked "Executive Offices". Just below that you will see the President's offices. His offices are located there. Some of the Vice-President's offices are located there. The Finance Department is located in that area. You will see that indicated there, "Finance". Then you come down to the cafeteria, and then just beyond the cafeteria you will see the Procurement office. It's all office space.

Q. Is there any production, actual production work that takes place in this building?

A. No.

HEARING OFFICER: Do you have any questions, Mr. Laracy?

MR. LARACY: Yes.

CROSS-EXAMINATION

Q. (By Mr. Laracy) Referring to E 1 under "Manufacturing Director, are the employees under the manufacturing director organized into any collective bargaining unit or any local union?

[21] A. You are looking at E 1?

Q. Yes, your organizational chart.

A. I'm sorry. I didn't get the gist of your question.

Q. Under "Manufacturing Director"—was it Mr. Gaspar—are the employees under his direction, are they organized into any collective bargaining agreement?

A. Yes, they are.

Q. Would you tell us what breakdown, what local and so forth?

A. Primarily under his supervision there the production and maintenance pepole are in what is known as Local 501 UAW. That constitutes generally the manufacturing people, and I guess that covers all that he supervises, 501 people.

Q. That's a UAW local?

A. Yes.

Q. Under "Manufacturing Program Management Director", are the employees under his jurisdiction, are they organized into any collective bargaining agreement?

A. I am not certain. I don't believe so. I don't think there are any in there. That's more or less of a staff-type of unit. They are not in the production end of the business they are just staff. Most of your 501 are under Mr. Gaspar.

Q. Under Mr. Lotz, 20 estimators, would you classify them as technical or clerical employees? As you know, the Board classifies salaried employees as either clerical, technical, [22] professional or plant clerical. What do you classify these estimators as?

A. I would probably call them technical.

Q. How about the forty-six and three PETA employees?

A. They are probably technical. They are not professional in our opinion.

Q. How about the two loft employees?

A. I would classify them as manufacturing types. I think frankly they are ought to be over in the production and maintenance. They are not.

Q. Would you possibly call them skilled?

A. Yes, I think they are skilled.

Q. How about the forty-one production control employees?

A. I would call them perhaps clerical.

MR. LARACY: Off the record?

HEARING OFFICER: Yes, off the record.

(Discussion off the record)

HEARING OFFICER: Back on the record.

MR. LARACY: That's all for now.

HEARING OFFICER: I have some questions.

RECROSS-EXAMINATION

Q. (By Hearing Officer Palermo) Referring to Employer's Exhibit No. 1, the Procurement Director, Mr. Seitz, if I understand this correctly, reports to whom?

A. He reports to the Vice-President of the manufacturing [23] departments, Mr. Nochisaki, through the Executive Director, Mr. Kastelowitz.

Q. Under the Procurement Director we have Procurement Assistant Director, Sub Contract Purchasing Agent, General Purchasing Agent and Administrative Manager. Where in this configuration would Department 121 fit?

A. Well, these are the supervisors, as you understand, that carry out the functions of this particular department. Now, I am not quite certain. This probably can be clarified later. These buyers are pretty well scattered among these different supervisors as reflected.

Q. In other words, Mr. Cleveland, Mr. Rae, Mr. Muni and Mr. Folker?

A. I don't think Mr. Folker has any buyers, but I think the other three do.

Q. Do all these buyers work in one office or one general office area?

A. Yes, as I understand they do.

Q. Do they have separate offices?

A. That I don't know. I am not familiar with it.

Q. All right. Mr. Wacks, you indicated that in your belief the buyers in question were professional employees. Is a college degree a pre-requisite for being a buyer?

A. No, I don't believe it is.

Q. What kind of special training do they have?

[24] A. Well, some have degrees, some don't. Whether they have a degree or not, they come in and they are assigned to different functions, and through a development program that we have, their training program that we have, they develop and are exposed to the functions of the department.

Q. Would you hire a man with no prior experience as a buyer?

A. I don't know. I don't run that department. I don't know what Mr. Seitz would do.

HEARING OFFICER: Off the record.

(Discussion off the record)

HEARING OFFICER: On the record.

Q. (By Hearing Officer Palermo) Mr. Wacks, am I correct in assuming Mr. Seitz could better answer these questions?

A. I think so.

Q. And he is here?

A. If they pertain to administrative, that's his department.

Q. Who would be best able to answer, Mr. Seitz or you, concerning benefits and so forth received by these people?

A. I think so.

Q. Mr. Seitz?

A. Yes.

HEARING OFFICER: Nothing further.

RECROSS-EXAMINATION

[25] Q. (By Mr. Laracy) In your testimony you made the statement buyers in your opinion are professional. Are you claiming they are professional in this hearing?

Are you taking the position they are managerial or are you taking the position they are professional employees?

A. I said they are considered like professional employees in the company.

Q. You are not taking the position these buyers are professional?

A. I am not taking any position. I am saying they are managerial as far as what they do. The type of work they perform is managerial in nature.

Q. You say these buyers were excluded, they are exempt under the Wage and Hour Law. This actually was the Company's determination, right, that these people were exempt under the Wage and Hour Law?

A. That's right.

Q. You are aware this does not exclude them from representation under the National Labor Relations Board?

MR. WINCH: That is a question of law and I am not sure what the answer is.

HEARING OFFICER: Are you objecting?

MR. WINCH: Yes, I object.

HEARING OFFICER: Okay. Sustained.

Q. (By Mr. Laracy) Is it your opinion because they are [26] exempt under the Wage and Hour Law they are exempt under the National Labor Relations Board Act?

A. I think this is a matter of law. I don't have to testify to that.

MR. WINCH: Again I object to the question.

HEARING OFFICER: I think it is clear from the testimony that obviously the Employer feels that these people are excluded from the Act, not covered by the Act. I trust that as the testimony develops that position will either be supported or refuted. So, on that basis I will sustain that objection also.

MR. LARACY: That's all I have.

MR. WINCH: No further questions.

HEARING OFFICER: You may step down.

(Witness excused)

MR. WINCH: I offer No. 2, Employer's Exhibit No. 2 in evidence.

HEARING OFFICER: Mr. Laracy, do you have any objection?

MR. LARACY: No objection.

HEARING OFFICER: It will be so received.

(The document above-referred to, heretofore marked Employer's Exhibit No. 2, was received into evidence)

MR. LARACY: Off the record?

[27] HEARING OFFICER: Off the record.

(Discussion off the record)

HEARING OFFICER: All right, back on the record.

MR. WINCH: Would you mark this in evidence?

(The document above-referred to, was marked Employer's Exhibit 3 for identification)

MR. WINCH: I offer in evidence the document entitled "Alphabetical Listing of Buyer Personnel in the Procurement Department of Bell Aerospace Company as of July 20th, 1970." You will notice there is one name stricken from the list, Dimiceli. He is no longer a buyer.

HEARING OFFICER: Mr. Laracy?

MR. LARACY: No objection.

HEARING OFFICER: The exhibit is received.

(The document above-referred to, heretofore marked Employer's Exhibit 3, was received in evidence)

HEARING OFFICER: Do you have any further witnesses at this point?

MR. WINCH: Does the union have witnesses they wish to put on at this time?

HEARING OFFICER: Off the record.

(Discussion off the record)

HEARING OFFICER: On the record.

MR. WINCH: Mr. Seitz, will you take the stand, please?

[28] Whereupon,

FREDERICK M. SEITZ

was called as a witness by and on behalf of the Employer and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Winch) Would you state your name for the record?

A. Frederick M. Seitz.

Q. I am showing you Employer's Exhibit No. 1 or a copy of same. You are the gentlemen who is shown in the far right-hand column as being the Procurement Director?

A. That's right.

Q. And that is your title?

A. Yes.

Q. How long have you been Procurement Director?

A. My title has changed a couple of times. I have been Procurement Director for eight years during several of these years I was Director of Material, which also encompassed procurement.

Q. Let's go back and let you describe your experiences in Procurement, not only at Bell but elsewhere. When and where did you get your start in Procurement?

A. Okay. I started in 1939 as a buyer in a machine shop in Philadelphia. I made numerous changes after that, [29] all in the DOP, Defense Orientated Procurement field, primarily aircraft, electronics, aviation and missiles.

From a buyer I went up progressively through the strata of management until I ran the show at three different major defense plants.

Q. What plants?

A. Kaiser Aircraft was the first one. Then I became Material Manager Director of Procurement at Dastrom Incorporated. Then I came to Bell to be Director of Procurement.

Q. What year?

A. 1962.

Q. 1962 you came to Bell?

A. Yes.

Q. You have some sort of a certification or title that you hold?

A. Yes. I am a certified professional purchasing manager. This is a certification that is awarded by the

National Association of Purchasing Management. It can be related to a CPA in the accounting field.

MR. WINCH: Now, would you mark this, Mr. Reporter?

(The document above-referred to, was marked Employer's Exhibit 4 for identification)

Q. (By Mr. Winch) I will give you one and ask you to state for the record what this shows?

[30] A. This is an organization chart of Department 121, Procurement Department. It's almost current. There have been one or two changes. One of the buyers in the extreme left-hand column, Lienert, is no longer with us. Another buyer, Dimiceli, in the fourth column out of the box has been changed to another job. He is no longer a buyer.

HEARING OFFICER: Another job within Department 121?

THE WITNESS: Yes.

HEARING OFFICER: What is his current job?

THE WITNESS: His current job is an expediter. Otherwise this represents the department as it operates today.

Q. (By Mr. Winch) Now, I see a dotted line running down from the line at the top middle part of the page running to a box PBPS WRO, Manager J.P. Kamp. Are those men expediters?

A. Yes, that is their function. WRO stands for Western Regional Office. They are off site. PBPS, for the benefit of Mr. Palermo, stands for Post Boost Propeltion System, which is the biggest job we have. These people were sent from the West Coast to expedite and handle any problems with out West Coast suppliers, which there are twelve or so.

Q. Then continuing to the right-hand side of this exhibit, Exhibit 4 for identification, there is a group of [31] eight people under expeding supervisor R. W. Chase. Are they also expeditors?

A. Yes, they are. And I notice another change which I missed. Mr. Smith and R. Potter are no longer with us. They have left the company.

Q. And then down at the bottom under Cost and Price Analysis Statistics there are A. Starke and R. Victor. They are no longer buyers are they?

A. No, they are Cost and Price Analysts.

Q. Right.

HEARING OFFICER: The Cost and Price Analysts work in the Department 121?

THE WITNESS: Yes.

HEARING OFFICER: But they are under—

THE WITNESS: Mr. Folker.

HEARING OFFICER: Mr. Folker? I see. Do they work in the same area?

THE WITNESS: Yes.

HEARING OFFICER: Same general area as the buyers?

THE WITNESS: Yes.

HEARING OFFICER: Do the buyers have offices?

THE WITNESS: Yes. I should qualify it.

HEARING OFFICER: Private offices?

THE WITNESS: Private offices, with the exception of [32] two or three who are together in one office. We do not have anymore than two in an office, but because of space limitations we have two, four that occupy two-man offices.

MR. WINCH: Now, Mr. Reporter, will you mark this document for identification? Mark the document that says Buyer, Senior for identification.

(The document above-referred to was marked Employer's Exhibit No. 5 for identification)

MR. WINCH: Then mark this document, Buyer, Class 2, for identification.

(The document above-referred to was marked Employer's Exhibit 6 for identification)

MR. WINCH: Before I go on to this, I offer into evidence Employer's Exhibit 4 which we have been discussing.

HEARING OFFICER: Any objection?

MR. LARACY: I have a couple of questions on some of these people. We can leave this go until later. I have no objection to these.

HEARING OFFICER: You have no objection?

MR. LARACY: No, except for questions I want to ask later.

HEARING OFFICER: Employer's Exhibit 4 is received.

(The document above-referred to, heretofore marked Employer's Exhibit No. 4 for identification, was received into evidence)

[33] Q. (By Mr. Winch) Would you please state for the record what Exhibit 5 for identification is?

A. This is a job description for Bell Aerospace, the job description for a Senior Buyer. It describes in general terms what he must do, what is expected of him.

Q. Does it mean that he necessarily performs all the duties that are contained in the description of the job?

A. Yes.

Q. And he does that in practice, does he?

A. Yes.

Q. I show you Employer's Exhibit No. 6 for identification and ask you to state what that is?

A. This is a job description for a Buyer Class 2, who is of lesser capability and stature than a senior buyer.

Q. And does the description of the job accurately state the duties of the job performed by the Buyer Class 2?

A. Yes, it does.

MR. WINCH: I offer into evidence these two exhibits, 5 and 6 for identification.

HEARING OFFICER: Any objection?

MR. LARACY: No objection.

HEARING OFFICER: Employer's Exhibits 5 and 6 are received into evidence.

[34] (The documents above-referred to heretofore marked Employer's Exhibits 5 and 6, were received into evidence)

Q. (By Mr. Winch) I call to your attention that under Desirable Qualifications in the case of Buyer, Senior, it states, College Graduate with a Degree in

Business Administration or its Eqiuvalent in Training and Experience. Is it necessarily so these buyer-seniors should be college graduates?

A. No, it isn't.

Q. And also in Buyer, Class 2 it says, College Education or its Equivalent. Is it a necessary qualification?

A. No, it is not.

Q. What is necessary from the standpoint of qualifications before you would employ buyers in either one of these classifications?

A. Experience. In one word experience in a comparable type of duty, procurement work elsewhere, preferably in the field we are in. The more experience the better.

HEARING OFFICER: May I just ask you something here? On Employer's Exhibit No. 5 for Buyer, Senior, you have at least six years of successful and progressive experience in buying and related procurement activities. Is that the minimum number for a senior, Senior Buyer, six years experience?

[35] THE WITNESS: There may be exceptions, but I would say all of our Senior Buyers, all of them have at least six years or more experience.

HEARING OFFICER: Before they were hired?

THE WITNESS: I can't say that. Some of them had been there twenty or more years before I came here. They started at something less than Senior Buyer and worked up.

HEARING OFFICER: In hiring Buyer Class 2 would three to five years experience be essential?

THE WITNESS: I think it would, yes.

HEARING OFFICER: One more question. I notice Employer's Exhibit 5 is dated May 17th, 1963. Has the job description been changed since that date?

THE WITNESS: No.

HEARING OFFICER: Employer's Exhibit 6 is dated January 1st, 1944. Has that job description changed?

THE WITNESS: No, it has not.

HEARING OFFICER: All right.

Q. (By Mr. Winch) Now, will you explain in general terms the function of the Bell Company's Procurement

Department as to the acquisition of skills in given areas and the exercise of these skills? A general description of how your departments operate.

A. Do you want a mechanical description or could you [36] rephrase that, Mr. Winch? A mechanical description of how requisitions come into the department and are distributed or worked on?

Q. You can start with that, yes.

A. Well, requisitions come from a variety of sources. There are twenty-nine or thirty of them who feed us our go-ahead to do something. A requisition is an authorization to buy something that is a requirement, someone else needs something that we don't have.

Depending on what commodity the requisition covers, it either gets fed into the purchasing part of our department for straight off-the-shelfbuying or into sub contract where it is sent to the appropriate person or funneled out to a cognizant buyer who through lengths of service in a given field has developed certain expertise on that particular commodity.

Q. Do you mean to indicate some buyers are experts in one kind of work of the department and not in others?

A. Oh, yes, definitely.

Q. Would you explain that?

A. Well, as I said, buyers historically accumulate expertise in one or more fields of buying. There are numerous fields I can cite running from raw materials to MRO, Maintenance, Repair and Operating supplies, to casting and forging, to electronic sub assemblies, to [37] electronic bits and pieces, to simply conductors to hardware fasteners to complicated sub assemblies to complicated units such as Bi Propellant Valves or long distance radar. Radar is a big one.

These buyers become exposed over the years to these different commodities—different commodity fields. They become more expert than others. For instance, a buyer of hardware who has been doing it effectively for five years might fall flat on his face in raw materials. A buyer successfully buying electronic black boxes would not be as successful in the sub contract machining area because he has not been exposed to it. Length of ex-

posure to one or two given commodity fields makes a buyer effective. He learns the idiosyncrasies or ramifications of a given field, such as trade factors, pricing methodology, nomenclature, and he develops contacts as to where to go, who to call. He gets to know these people by name and he establishes rapport with these people so he can effectively and timely weigh things. He is used to the things he is experienced with whereas another person experienced in other commodities would have a hard time.

I am saying they are not interchangeable per se. As a matter of fact—if I'm going too long tell me. We have buyers right now in our department who have been —in our philosophy we like to rotate people to make them more [38] flexible, to give them experience and exposure to another commodity field. We had—we have a couple there right now that were given this opportunity to move from standard off-the-shelf areas into complex sub contracting, which is a lot different, and who asked to be returned to their original assignment because they couldn't hack it in the other. We had one who requested and received a downgrading. He is no longer with us because we put him in a sub contracting function and he could not sleep nights. It was beyond his capacity.

Q. Do these buyers go outside the plant in the course of their buying?

A. Oh, yes. Mostly the sub contract buyers go out of the plant. And you were discussing overtime. I might point out often they leave on a trip on a Sunday afternoon to catch a plane for Los Angeles or wherever they are travelling to all the time. They might get into negotiations in Los Angeles which amounts to twelve or fourteen hours a day. This is something where when 5:00 o'clock comes you do not blow a whistle, you continue.

Then they get on the "red eye", which is a middle of the night flight that gets you back to Buffalo at 10:00 a.m. They will come back to work that afternoon or maybe the next day, but they have been on twenty-four [39] hours a day duty on a casual basis. They do this often. We had six buyers last week and

this week on separate assignments out of town like that.

Q. And does their responsibility cease after they have placed an order?

A. No. Placement of the order is only the beginning. Once the order is placed they must monitor, they must manage. They monitor the performance of that vendor. They see that he does what he has contracted to do. They resolve problems to remove road blocks. They negotiate changes. They monitor and make sure that the vendor performs the way he was contracted to.

HEARING OFFICER: Excuse me. Mr. Seitz, could you just give us an example of this monitoring technique? Can we take a hypothetical order?

THE WITNESS: Yes. We will establish a parts work statement, a production plan. It might incorporate a line of balance, which is a chart method making visible the vendor's pipeline which results in the finished parts.

The first item to look for would be the completion of parts by casting or forging. The next thing they are received for inspection. They are put into a lathe. Then you assemble them in a milling machine. It's a simple test.

I've made it sound sort of sweet. Some have forty or [40] fifty control points. These are monitors by the buyer to make sure these pipeline activities fill up so that there won't be a bubble that would prevent the end method delivery.

HEARING OFFICER: In other words, he sees to it that these parts are progressing through the vendor's production process according to specifications?

THE WITNESS: Right. If these things do not happen corrective action has to be taken. He gets with the vendor to make sure something is happening to remove that block. Another method is milestone events.

MR. WINCH: I didn't understand that.

THE WITNESS: Milestones, major events which have to happen by a certain time in order for the vendor to meet his date. This could be materials, starting and stopping.

There are other methods. There are interchange meetings with the vendor that are covered in the negotia-

tions. The cost of these meetings is covered, which the buyer goes to the vendor's plant and gets a presentation as to the status of that job. Other methods are from the very simple to the very complex. The very simple is a matter of a phone call to the vendor, "Hey, you're supposed to ship tomorrow. Are you going to?" The vendor tells him yes or no. The action that fellow takes depends on what he tells him. Or it could be a lengthy trip, a real [41] inquisition to the vendor that looks down his throat to see that the vendor stands up or performs like he should.

Q. (By Mr. Winch) Does the buyer have discretion and independent judgment as to which method he should follow?

A. The buyer has great discretion, as Exhibit No. 5—which is the job description for Senior Buyer—says under general directions, and with considerable latitude for independent action. He has considerable latitude. We expect him to use his judgment to get the job done. It is a matter of judgment, discretion. He looks at a given set of circumstances and through his experience knows what has to be done in order to get it back on the track or to have a successful completion of contract.

MR. WINCH: Now, Mr. Reporter, I ask you to mark for identification this document entitled Bell Aerospace Systems Company Policy and Procedure.

(The document above-referred to was marked Employer's Exhibit 7 for identification)

MR. WINCH: There is a second page to this. I do not suppose that needs to be marked.

HEARING OFFICER: I think it is two-sided. That's correct.

MR. WINCH: This is one of four. That's actually four pages. This is Page—

[42] HEARING OFFICER: 3 and 4.

MR. WINCH: I suppose I should have Page 1 marked as being part of the same exhibit?

HEARING OFFICER: It's all the same document; that's correct. Let's mark it then as Employer's Exhibit 7, both pages.

MR. WINCH: Now, Mr. Hearing Reporter, I give you still another document marked Bell Aero Systems Company Departmental Job Constructions, which consists of a single sheet of paper with writing on both the front and back, and ask you to mark that for identification.

(The document above-referred to was marked Employer's Exhibit No. 8 for identification)

Q. (By Mr. Winch) Now, Mr. Seitz, I ask you to refer to an—to Exhibits 7 and 8 for identification and describe them and the functions which they are used to perform in your department.

A. Exhibit 7 is a Bell Aero Systems policy and procedure, commonly known as BAPP. This establishes financial limitations for Bell personnel who are selling something that Bell has to deliver or who are buying something, which my department does. This is a flow down of a Textron Limitation on the extent of commitments its personnel may make.

Q. What are those limitations in reference to [43] procurement commitments?

A. On Page 3 of the BAPP, procurement buyers are allowed to commit the company—that means sign the purchase order—up to $50,000, procurement supervisors up to $100,000, purchasing agents up to $500,000. And Mr. Cleveland and myself have no limitations on signing commitments for Bell to incur costs.

HEARING OFFICER: If I might just for my own clarification here, referring to Employer's Exhibit No. 3, the list of employees which I will show you, sir, what amount may the people on that list commit the company to?

THE WITNESS: These people make commitments up to $5,000 on their own discretion, provided they have recognition. All these people may sign up to $5,000.

HEARING OFFICER: Up to $5000?

THE WITNESS: Yes.

Q. (By Mr. Winch) Now, I ask you to refer to Exhibit 8 and differentiate that, if you will, from Exhibit 7, particularly with respect to the amount, the limitations?

A. No. 8 is a departmental job instruction which is issued entirely within my department, prepared by my department to define company policy as it relates to the procurement operation. Exhibit 8, DJI, Department Job Instruction 121-304 stratifies the signatory authorization requirements. It goes on to say the buyer is authorized to enter into [44] agreements on behalf of Bell Aero Systems Company in amounts not in excess of $5,000, without the necessity of securing additional signature approvals. Then it goes on to say above $5,000, but less than $10,000 an additional signature approval must be obtained. Between $5,000 and $10,000, it is the responsibility of the buyer to get his group supervisor's signature. Between $10,000 and $25,000 he has to get in addition to that, the purchasing agent's signature. From $25,000 to $50,000 it requires the signature of the Assistant Director of Procurement. When it goes over $50,000 he has to get my signature. When it goes over $100,000 he has to get the Vice-President of Finance and the Vice-President of Manufacturing's signature. That in essence is what Exhibit 8 is about.

Q. As a matter of practical operation, if a buyer makes a recommendation for a purchase in excess of $5,000, is that likely to be rejected or is it likely to be accepted? What is the usual procedure?

A. Of course as it goes up the levels of review more people get to look at it. More people get to question it. They question the buyer's discretion, his judgment, how did you arrive at the conclusion this is a good package which he is offering for approval.

The great majority of the time the buyer has done his homework well. He has convinced the people who now [45] have to approve what he has done that this is the way to go. There is some exercising his judgment. Did you consider this? Why don't you go this route? Sometimes as a result of these conferences within the department it might get modified slightly. But in the great majority of instances the buyer's homework and judgment and decision is concurred in.

Q. Can you give us some idea of the sort of presentation that the buyer makes when he gets orders above $5,000?

A. Yes. This would include, depending again on which strata it's going to, all the way up to a complete description of his source selection, source selection policy—not policy, why he selected the sources he did to solicit the bid, what bids were received, what fact-finding was conducted, what negotiation objectives were sent, what negotiations were conducted, and what the results of those negotiations were, arriving at the conclusion this now is a package that represents a mutual agreement between us and the vendor.

Of that kind of procurement that gets beyond $5,000 and must go higher for approval we have a standard package form which includes everything from the requisition to the recommended type of contract and the language of that contract that goes through the approval, signature approval routine which describes what is taking place, [46] what we are buying, where are you, why is it a good fixed price. This package is now a permanent part of the procurement file.

Q. Directing your attention again to purchases in amounts of less than $5,000, are there instances where buyers cancel an existing order or commitment or contract and place the order with an alternate vendor?

A. Yes, that can happen.

Q. It does happen in practice?

A. Yes.

HEARING OFFICER: On their own, sir?

THE WITNESS: Yes. This is within their jurisdiction.

Q. (By Mr. Winch) On these orders under $5,000, $5,000 or under, no approval is necessary?

A. That is correct.

Q. It is entirely up to the buyer?

A. It's strictly up to the buyer.

MR. WINCH: I offer in evidence Employee's Exhibits for identification 7 and 8.

HEARING OFFICER: We have 7 and 8. Oh, I'm sorry.

MR. WINCH: You have them for identification. I will offer them in evidence.

HEARING OFFICER: Any objection?

MR. LARACY: No objection.

HEARING OFFICER: All right. Employer's Exhibit 7 and [47] 8 are received in evidence.

(The documents above-referred to, heretofore marked Employer's Exhibits 7 and 8, were received in evidence)

MR. WINCH: Now, Mr. Reporter, I hand you a document entitled "Commitments by Buyers 1/2/69 through 7/31/70" and ask you to mark that for identification.

HEARING OFFICER: That will be Employer's Exhibit No. 9.

(The document above-referred to was marked Employer's Exhibit No. 9 for identification)

Q. (By Mr. Winch) Now, by reference to this exhibit will you state what it is intended to show? This is an exhibit you prepared at my request, I believe?

A. Yes.

Q. What is it intended to show and what does it show?

A. This shows the number of transactions that were committed by the buyers from January 2nd of 1969 through July 31st of this year, a period of nineteen months.

It shows the buyer, his identification number, which is the second column. These numbers after the buyer's name becomes something to purchase—become suffixes to purchase order numbers for easy identification purposes.

It shows the number of transactions during that period, [48] under $5,000, how many dollars that buyer committed in transactions of less than $5,000, how many transactions there were in that category, how many dollars he committed the company to in over $5,000 sizes, and the number of those transactions. Then there is an accumulative total of both categories, over and under. plus the total number of PO's purchase orders, that he placed during that period and the dollars he committed the company to.

I might clarify this further to say this does not constitute all of the work he has done. It is representative of it. These records were captured by EDP, Electronic Data Processing. These represent purchase order transactions that were recorded on EDP. There are a number of transactions the buyer commits that are not thought appropriate to keep on our computers, such as medical supplies for instance. These are production items primarily, raw materials that do get on our computers. It was easy to catch the number of these transactions, under $5,000, over $5,000, and their accumulative effect.

It shows for instance the third man down, Charles Hopkins, who is Buyer No. 6, spent $1,351,983.00 in transactions less than $5,000 where he needed no one's signature or approval. There were 3,299 of those types of transactions. He also spent $2,727,205.00 in over $5,000 transactions. There are 133 of those.

[49] Charlie Hopkins committed the company to in excess of $4,000,000 in that nineteen month period in 3,432 purchase orders.

Another big spender is La Belle, the seventh one down—eighth one. He didn't have too many under $5,000. He spent $15,462 in that category. But he spent $4,587,723 in the category over $5,000. In that period he committed twenty-seven transactions for better than four and a half million dollars.

MR. WINCH: I offer Exhibit No. 9 for identification into evidence.

HEARING OFFICER: Is there any objection?

MR. LARACY: No objection.

HEARING OFFICER: It is received into evidence.

(The document above-referred to heretofore marked Employer's Exhibit No. 9, was received into evidence)

THE WITNESS: I would like to point out one thing further. In the under $5,000 category, these buyers who are still with us committed the company to $7,671,172.00. That required no approval beyond their own good judgment.

HEARING OFFICER: Referring back also to Employer's Exhibit No. 4, which is the organization chart—

THE WITNESS: Yes?

HEARING OFFICER: You have several supervisors in that department. Among them is the purchase agent [50] Mr. J. P. Muni, under general purchasing?

THE WITNESS: Yes.

HEARING OFFICER: Would that be what you referred to as off-the-shelf or what?

THE WITNESS: Generally speaking, yes.

HEARING OFFICER: What kind of items would be purchased under general purchasing?

THE WITNESS: MRO, Maintenance, Repair and Operating supplies. This could include multi-thousand dollars, such as fuel oil, which is a half million dollar item. The purchase could be rental of IBM equipment, which is over a million dollars a year. It's everything you need to maintain, repair and operate your shop, light bulbs to replace the burned out bulbs, paint to refurbish the building, wiping rags for the shop, expendible tools for the shop, raw materials for the shop, paint, towels, desks, office supplies, stationary.

HEARING OFFICER: Now, for example, is Mr. Tomasino still a buyer under Mr. Muni?

THE WITNESS: Yes, he is a raw material buyer. The off-the-shelf type of things you wouldn't say are MRO that still come under Mr. Muni are the off-the-shelf type standard hardware. Special hardware or paints and thinners or adhesives that find their way into production, that would not be MRO. I'm talking about production materials [51] Mr. Muni buys. These are largely catalog items or standard items you could buy from a variety of sources.

Q. (By Mr. Winch) When you use the term "off-the-shelf" does the buyer simply go and pick an item, a given item or shop around or how does he perform that procurement function?

A. It depends on what off-the-shelf item it is. If it is something specific such as a General Electric motor for instance, it is off-the-shelf. It is a standard item. It is a catalog item. You are not going to shop around for it because General Electric is the only one that makes that. If the requisition says a General Electric

motor is its equal, then he can shop around. He can do this on his own discretion and come back and say, "Hey, I can get a Westinghouse cheaper. We can use that."

"Off-the-shelf" means a standard item made in quantity for the general public that we can specify and buy as an off-the-shelf item from a number of places, from a number of distributors or sources.

Q. Does the buyer in any way influence the company or you or Mr. Cleveland your assistant in determining how purchasing should be made and means of saving money for the company by changes in the method of purchasing?

A. Yes.

Q. Would you describe that, please?

[52] A. Well, we have a cost reduction program that has been going on ever since I have been there which it stresses being competitive by doing competitive procurement. It encourages the buyers to come up with better ways of doing their job to get a better buy at a better price. They make recommendations constantly as to how to do things better, how to do things like maybe putting a repetitive item on a blanket order which saves paper work and gets you a better price. Now you are lumping annual requirements into a lot more attractive package for the bidders to bid on.

Cost reductions in the form of a recommendation of an alternate material occurs. There are recommendations of a substitute for something that has been specified as a priority item. A buyer knows somebody else that is making something with a different and a little cheaper material.

Many times we go back to the requisitioner and say, "Hey, we can get something better than that at a better price." We rack up a couple of million dollars regarding cost reductions every year partly through this kind of activity.

MR. WINCH: Mr. Reporter, I hand you a document entitled Purchase Requisition Input to Procurement and ask you to mark that for identification.

[53] (The document above-referred to was marked Employer's Exhibit No. 10 for identification)

Q. (By Mr. Winch) Now I am going to look over your shoulder because I do not have a copy for myself. Will you please explain for the record what Exhibit 10 for identification is intended to show?

A. This shows and as the title indicates the purchase requisition input to procurement. This is a requirement what the people need that we have to get for them. This shows up to us in the form of a requisition. It shows that from January 1st to July 31st of this year we received a total of 15,977 such inputs. It shows that 5,050 of these came from 1286 people.

And in the form of requisitions for production requirements, for outside tooling and for machinery and equipment, it shows that twice as many came from 26 other sources. These are procurements customers and departments that need something come to procurement to buy it for them.

We received a total of over 10,000 requisitions from 26 sources delineated in these blocks. Probably I can elaborate on it. Electronic systems is self-explanatory. Engineering labs, manufacturing engineering labs, research and development labs—

[54] Q. That's R & D, Research & Development?

A. Yes. MRO. Then we buy things for traffic and garage. We buy packaging supplies so we can ship our products. We buy medical dispensary supplies. Product assurance is quality. Photographic supplies; office supplies, that includes desks, stationary, phones; perishable tools are drills, reamers, things like that. Reproduction service, we buy their paper for them. Plant engineering covers a wide field. If the parking lot needs resurfacing a requisition comes in from them. The rocket lab is a test lab who buys a variety of hardware. Technical data control got left out of that one. We buy a variety of things for them.

HEARING OFFICER: Such as?

THE WITNESS: Hardware, valves, raw materials, the things they want to test. Personnel, we do some business with them in the form of requisitions for tem-

porary help, consultant, for outside services. Architectural services comes into play when we are going to build new buildings or modify one, like if we have to put a roof on one. Technical communication, we buy the *Rendezvous*, which is a monthly magazine Bell publishes for its personnel. EDP, Electronic Data Process. This is IBM equipment that we rent or buy, including paper services, soft ware programming. Capital equipment, non-manufacturing, [55] the differentiation there is made because some capital equipment comes from the group at the upper left-hand side, like machinery and equipment, which is a twelve—1286 function. But we do not buy all of our capital equipment on their requisition. We get requisitions from capital equipment, from quality, engineering, from the lab. The technical library, we order books, publications and periodicals for them. Safety is a yellow strip of paint for the aisle, goggles, safety shoes, it's special gloves and creams for people exposed to fumes that could be dangerous. Data phone is a communication equipment that we established that lets you insert an IBM card in a sender at our end. It is received at a vendor at the other end that prints out what it is you are putting in at this end. This becomes a purchase order without putting it on the card. "T" cards are tool cards which could be for repetitive type of reamers or a perishable tool that we use often. A "T" card, there is one for each of these repetitive items. If it's a 5 x 8 that describes the item at the top. Everytime a man in the tool crib needs something described in there he sends to procurement and we take the card and send it back. He puts it in the file. Altogether there are during the seven-month period, over 10,000 of these types of input that came into the department that did not [56] have anything to do with 1286.

Q. Looking at the left-hand side of this Exhibit 10 there is a heading "Upon Receipt of Procurement".

A. Purchase Requisitions.

Q. Purchase requisitions? Does that show what is done when a requisition is received?

A. Yes. This is a nutshell a version of what happens when we get a requirement from someone. We review

the purchase order first of all and see that it has the proper signature.

HEARING OFFICER: Who reviews the purchase order?

THE WITNESS: We have one focal point, who in this case is Mr. Muni.

HEARING OFFICER: For all buyers?

THE WITNESS: for all buyers. He reviews it and sees what category it's in and sends it to the other supervisor. That's the next step. Then it is assigned to a buyer. This is assigned to the appropriate buyer who has the expertise in that given commodity.

HEARING OFFICER: When you say "assigned to a buyer", you mean that Mr. Muni would hand the requisition to one of the supervisors like Mr. Wing or Mr. Hamann?

THE WITNESS: Yes.

HEARING OFFICER: Mr. Wing or Mr. Hamann—

THE WITNESS: Would assign it to one of their buyers [57] in their group and the buyer then prepares his bid package.

HEARING OFFICER: This is the individual?

THE WITNESS: The individual buyer that the requisition has been assigned to.

HEARING OFFICER: What do you mean "prepares a bid package"?

THE WITNESS: This can go from the extreme simplicity to the multiple complex type of package, depending on what it is.

HEARING OFFICER: If it is again a General Electric motor?

THE WITNESS: You do not need a bid package. You've got a part number and you know where to go to get this item. It's a telephone call. If it is a Phased Array Antenna which is a new development in the radar field where you get a pickup from a variety of sources, it's got a 180 degree capability of receiving, there are probably twenty companies in the country that are involved in the development of Phased Array Antenna we use in our aircraft landing system.

HEARING OFFICER: In other words the buyer would then prepare a statement of what it was the company wanted?

THE WITNESS: Yes. This I am getting to. This would [58] be a work statement which would include specifications that we want met, the schedule we want met, the type of contract we propose to negotiate, the quantity of course, and the quality requirement that has to surround this particular item. These bid packages can get quite detailed. They can amount to graphically a package that thick (indicating) of specifications.

MR. WINCH: Indicating about three inches?

THE WITNESS: Yes, indicating this is a complicated requirement, now this is what we want you to bid on and how we want you to bid.

HEARING OFFICER: Does the buyer do this by himself or does he consult with engineering?

THE WITNESS: He consults with engineers, he consults with just about everybody, every other discipline in order to make sure he has a good package. He would go to legal and find out what terms and conditions apply to this prime contract which we are letting a sub contract under.

He would go to engineering to get engineering specifications. He would go to material control to get blueprints properly if this is something we are going to buy.

HEARING OFFICER: Are all the buyers, those under general purchasing or sub contracting or anybody, would all the buyers at some point prepare bid packages?

[59] THE WITNESS: Yes, if you want to consider the simple question for quotations, which now is a standard item and can go to three or four sources. We have a request for quotation form which is a bid package which describes what we want, how much we want, when we want them.

HEARING OFFICER: Would those buyers under general purchasing ever prepare elaborte packages?

THE WITNESS: Some do. Mr. O'Bresly has prepared this for the Minute Man P106 cable assembly. Mr. Pearson prepares this kind of package for the—Pearson is Moog, I'm sorry. I guess O'Bresly is under that category that

prepares this kind of package.

HEARING OFFICER: Do all of these buyers, do they have the discretion of determining what company they will solicit bids from?

THE WITNESS: Yes.

HEARING OFFICER: Okay. Continue, sir.

MR. WINCH: Thank you. I offer in evidence, Exhibit No. 10.

HEARING OFFICER: Any objection?

MR.LARACY: I'd just as soon—I just assumed No. 1286 refers to Local 1286?

THE WITNESS: Yes.

[60] MR. LARACY: No objection.

HEARING OFFICER: Local 1286?

MR. LARACY: Pardon?

HEARING OFFICER: Let's go off the record.

(Discussion off the record)

HEARING OFFICER: Okay, back on the record. Employer's Exhibit No. 10 is receveid.

(The document above-referred to, heretofore marked Employer's Exhibit No. 10, was received in evidence)

Q (By Hearing Officer Palermo) On Employer's Exhibti No. 10 what does "PR'S initiated by 1286" mean there?

A Members of Local 1286.

Q That refers to the departments we dicussed on the blueprint?

A Yes, four members of the Amalgamated.

Q Let's continue with this. After he prepares the bid package the buyer then solicits bids?

A Yes.

Q Would you determine from whom he would solicit this, regardless of the cost, even if it were more than $5,000?

A Yes.

Q You have Item 5, "Receives and evaluates bids". What does that mean?

A He puts a time limit on how long the selected bidders [61] have to prepare their bid and get them in. And when

he gets all the bids in he evaluates them. He will make a spread sheet and list the various items of course from one vendor versus another vendor. He will call together his team in some cases where he sees fit to put a team together to evaluate the engineering input, to evaluate the quality input.

The buyer has at his resource all of the other disciplines at Bell. When he has a requirement where he thinks he needs technical assistance, such as technical input or quality input or legal input, he is free to call in these people to serve with him as a team. He has to evaluate, as team chairman, the—not only evaluate, but prepare a team package to make sure what we are asking for is going to meet the prime package. When these bids come in they are evaluated either by the buyer, who can do this by himself, or if he has established a team, by the team.

Q Then he detrmines who is going to get the bid I imagine? That's No. 6.

A Yes, makes source selection.

Q He does that independently?

A Yes. He uses the inputs of the other people.

Q But it is his decision?

A It is his decision. And this of course is a decision [62] that is arrived at with the help of others. But it is the buyer's final decision.

Q You mean he has to go to supervision?

A No. He may, but I'm speaking now of members of his team or the people of engineering he called into evaluate his bids.

Q What is No. 7, Conducts fact-finding?

A This does not apply to the off-the-shelf items where the price is cataloged and the item is sold in quantity to the general public. This now relates to a complicated or more complex sub contract item. This is usually a Bell Design which does not have too much competition to aid the buyer in selecting the best price. This is leading toward a negotiating—a negotiated price. This means examining all facets of the bidder's proposal, how many hours does he have in there for machine casting, how many hours of engineering, support labor, how many hours of quality does he have in there, what is his overhead, what is

his G and A, do we have an assist order from DECAS. Usually we do on more substantial commitments. Does he understand the requirement? How much material has he got in there? How much has he priced it at? How much hardware does he have to buy? What kind of service does he have to buy, such as heat treating or whatever he doesn't have.

[63] He has to evaluate all these things and establish whether or not the bid is inflated. Sometimes there are some things that you have to question. When you are fact-finding you go in and get him to show you his quotation for those outside services. You argue with him a bit about whether it should be eighteen hours per unit of engineering support or sixteen hours.

Q When he starts arguing with him I imagine that is where you get into negotiating price?

A You find out how he put his bid together. Then you come back and re-group with the people that were called in to help you and you establish negotiation objectives.

The quality man might say he's got too many inspection hours, he doesn't need half of that. So, you establish negotiating objectives. The buyer of this package spells those out in writing. These negotiation objectives then become the basis for the negotiations which are set out.

Q What if for example your quality man back at Bell says the vendor has too many quality checks? Does the buyer have the authority to overrule Bell's quality man? I mean, could he for example say I don't think so?

A He could but it's not our policy to do so.

Q Say he goes to negotiate and the vendor is not willing to give up the quality checks but he is willing to [64] give up something else. Is the buyer free to negotiate and agree to that with the vendor?

A Yes, he agrees to it subject to final approval of whatever signature level the package has to go to.

Q Say under $5,000?

A Under $5,000, no question.

Q But over $5,000?

A He would have to come back and explain to us why he could not reach his objective and he had to spend a little more because actually there were more quality—the

vendor saw more quality hours than our quality man did. There we have to get the two together to make a judgment as to who is right and is there room for compromise.

Q Then he prepares and issues a PO? In other words, if negotiations go well?

A Yes. They have to be approved. They have to have an approved package and a mutual agreement.

Q Who approves this?

A It depends on the signatory strata. Up to $5,000 nobody but the buyer, over $5,000 you have to get the approval of the signator.

HEARING OFFICER: I think we covered how he monitors problems and coordinates problems. You may continue, Mr. Winch.

Q (By Mr. Winch) Now, will you address yourself to [65] Mr. Wack's testimony saying that procurement people, buyers, are like professionals and describe how procurement and purchasing have changed during your experience as a Procurement Director and Procurement Manager?

A Well, procurement and purchasing are synonymous. There has been a great deal of change since 1939 when I entered it. We have gone from the horse and buggy days of buying. It now requires experts and skilled people who know what they are doing, to do a job under today's governmental DOD requirements, particularly. ASPR's have grown three times.

Q What are ASPR's?

A Armed Services Procurement Regulations.

HEARING OFFICER: DOD means Department of Defense?

THE WITNESS: Yes. There is no doubt in my mind purchasing is a management function. The official trade organ of purchasing is known as the National Association of Purchasing Management, of which we have a sufficient number in our department who belong to this Management Association who are voluntary members. They pay their own dues.

Historically buyers have represented management in their dealings with suppliers. The image that Bell or any company has in the commercial world, a good part of it is due to the image that the buyer projects because this

[66] is the only image the vendor sees, the only image the buyer sees, and it is management's image.

This is where vendors get orders from. He knows who is calling the shot from Bell. It is the man giving him the order.

As I indicated, some three million dollars a year worth of these orders are committed by buyers who are the sole authorized agents of the company to commit the company for any amount. So, this I think is a management function for we are spending management's money to achieve objectives. All purchasing people like executives in any other organization have constant interface with line and staff executives, the people they are servicing in the plant. They have interface with principals, the management and representatives of suppliers. They represent management to the suppliers.

To the outside world the purchasing man has more contact with outsiders than any other man in the company including the Public Relations Department. To the outside world the buyer is Bell's management. He represents management in describing the package we put together.

The position of the buyer is team chairman of the group that puts these things together. There is no question but what he manages the effects of the team he puts together within the plant. These teams usually [67] consist of managerial types from other disciplines, such as the Manager of Quality Assurance or Director of Technical Engineering or the Legal Counsel from Joe Conner's shop.

The fact that they can commit up to $5,000 and the amount of $7,000,000 just over the past year and a half indicates that we give them a lot of flexibility.

We give them a lot of prestige. On their judgment they can commit the company to this kind of money without further approval being required. And they represent Bell to the business world in this kind of volume to achieve management's objective. I just don't see how the—

MR. LARACY: What was the question

HEARING OFFICER: Are you objecting?

THE WITNESS: I got off the track. The question was—

HEARING OFFICER: I believe the question was, Mr. Winch asked for a description of how the purchasing function has changed over the years.

MR. WINCH: That's right.

THE WITNESS: And I thought you said how it had become a part of management in my estimate. That was what I was addressing myself to. It certainly changed over the past years, as anyone in the room who has been conneceted with DOD business is aware. We've come a long way in the complexity of things.

[68] HEARING OFFICER: Did you have anything further?

MR. WINCH: Not for now.

HEARING OFFICER: Let's break until 1:30. The hearing is adjourned until 1:30.

(Whereupon, at 12:30 p.m., the hearing in the above-entitled matter adjourned, to reconvene at 1:30 p.m., the same day)

[69] AFTERNOON SESSION

HEARING OFFICER: PALERMO: On the record.

MR. WINCH: Mr. Seitz, will you resume the stand? Whereupon,

FREDERICK M. SEITZ

resumed the stand and testified further as follows:

HEARING OFFICER: Mr. Seitz, you are still under oath.

THE WITNESS: Yes, sir.

HEARING OFFICER: Mr. Winch, you have no further questions; is that correct?

MR. WINCH: That is correct.

CROSS-EXAMINATION

Q. (By Hearing Officer Palermo) Mr. Seitz, I think we already have this but just to be sure, the buyers are salaried; is that correct?

A. That is correct.

Q. And you said that, just by way of review, that their casual overtime is not compensated?

A. That is correct.

Q. But if there was scheduled overtime those in the lower pay bracket would receive time and a half possibly and those in the upper pay bracket would receive straight time?

A. I am not sure how the formula works but that is the [70] theory.

Q. What is the pay range of buyers starting with the Class 2 Buyers? What are the Class 2 Buyers paid?

A. The lowest is somewhere around $165, and I am subject to correction. The lowest one in our department at the present time gets $195.

Q. What is the highest?

A. The highest is somewhere just this side of $300, $290 or something, and the highest in our department gets $271. That's a Senior Buyer.

Q. A Class 2 Buyer, what is the highest Class 2 Buyer?

A. 2? I have some notes if I can get them. I have them in there.

MR. LARACY: Sure.

HEARING OFFICER: Go right ahead.

MR. LARACY: We are off the record?

HEARING OFFICER: Off the record.

(Discussion off the record)

HEARING OFFICER: On the record.

Q. (By Hearing Officer Palermo) Let me rephrase my question. Could you give me the salary range for Class 2 Buyers?

A. Yes. This is actual, $195 to $211.

MR. LARACY: What is that again?

THE WITNESS: $211.

[71] Q. (By Hearing Officer Palermo) And for Senior Buyer?

A. $226 to $271.

Q. According to your employee list here, as I recall it, there are six Class 2 Buyers and nineteen Senior Buyers at the present time; is that correct?

A. That's right.

MR. WINCH: If the Hearing Officer please, we are having a further check made over the telephone. Mr. Wacks tells me that there is some question as to just what the spread is.

MR. WACKS: Here is the man.

HEARING OFFICER: Excuse me, off the record.

(Discussion off the record)

HEARING OFFICER: On the record.

Q. (By Hearing Officer Palermo) Mr. Seitz, the figure you just gave us, as I understand it on the basis of our off-the-record discussion, are the actual records from your latest information?

A. That is correct.

Q. What is the company's spread for those two classifications starting with Class 2 Buyers?

A. Minimum $141, maximum $219, Class 2.

Q. For Senior?

A. $175 to $287, Senior Buyer.

Q. Have any of these Senior Buyers currently on your [72] payroll been promoted from Buyer Class 2?

A. Oh, yes.

Q. How many? Do you know offhand?

A. I couldn't answer that without checking it. I would have to really make a survey of this. At least a half dozen.

Q. At least six. Now, the Class 2 Buyers, according to their job description, work under the supervision of the supervisor of purchasing or an individual of equal or higher rank. In practice do the Class 2 Buyers have a fairly wide degree of autonomy?

A. Yes. They have just such flexibility and their discretion applies up to $5,000 without any higher authorization required.

Q. Can they independently select the vendor?

A. Yes.

Q. Do they visit the vendor?

A. Yes.

Q. And they negotiate prices with the vendor?

A. Yes.

Q. How often are they paid, weekly or monthly?

A. Weekly.

Q. Are all your other employees paid weekly to the best of your knowledge?

A. Yes.

[73] Q. Do buyers move into upper supervisory positions?

A. Yes.

Q. For example, was Mr. Wing?

A. Mr. Wing and Mr. Hamann were both Senior Buyers.

Q. Would you expect that in the normal course of events if these jobs currently being held by supervisors were to become vacant, that there will be a progression from among the Buyers? I am not saying that would be absolute.

A. Yes, we would prefer this.

Q. Do the buyers, both Class 2 and Senior, receive benefits other than your hourly employees?

A. Yes.

Q. What are these?

A. I would appreciate deferring to someone in Industrial Relations on that question.

Q. Okay. You indicated that it is not always essential these buyers have a college education. Is a high school education required?

A. It is not required.

Q. Do you have any buyers who are not now high school graduates?

A. I don't know of any.

Q. You don't know of any?

A. No, I do not.

Q. Would the company prefer people with college [74] backgrounds or experience or what?

A. I think of course a college background indicates a discipline of how you apply yourself to problems. I would say, all things being equal, we would prefer a college background. However, I do not think it is really a criteria. I would like to see an equal in actual experience. I think experience is the real criteria that I would look for.

Q. When a new buyer is hired, what kind of training do they go through from the company itself?

A. There is no formal training plan. Of course we expose them to the BAPP's, the Bell Aerospace Policy and Procedure. And we indoctrinate them as well as we can in the way that we operate, the requisition routine and the internal limitations and authorization.

Q. Would they work along with a more experienced buyer say when they are being trained?

A. Yes, under the close supervision of a group supervisor.

Q. About how much time will it take, and I am sure it would vary from individual to individual, but as an average approximately how much time is required to train a new buyer at Bell?

A. I'm afraid as you said that varies depending on the capability and experience of the new buyer.

[75] Q. Can you give me a range?

A. A new buyer can be effective at Bell within a couple of weeks, based again on his knowledge of procurement and the supervision he gets.

Q. Well, a person who could become profficient within two weeks, would this be a person with aerospace experience?

A. Yes. I would qualify that and say the commodity with which he is assigned also.

Q. Is there ever any interchange of buyers in general purchasing, avionics or any of the other areas?

A. Interchange in assignments you mean between—

Q. Yes. In other words, in a rush season could a buyer be moved out of general purchasing and put into avionics?

A. Yes.

Q. Has this been done?

A. Yes.

Q. Do the buyers ever move laterally from one area, for example General Purchasing, to say Propulsion on a permanent basis?

A. Yes.

Q. Would the more experienced buyer work in any particular area?

A. Yes.

Q. What area would be the most profficient?

[76] A. That would be the sub contracting area.

Q. Of both propulsion and outside manufacturing?

A. Yes.

Q. What is outside manufacturing, by the way?

A. This is the farming out of either shop overload or work that can best be done outside because of specialized equipment that is available outside. We call it "outside procurement", outside machines, sub contract.

If I may I would like to expand a little in the direction you seem to be taking. The buyers all over the department in both sections follows the same procedure. Buyers in the general section which I categorized as "off-the-shelf", it need not necessarily be an off-the-shelf commodity he is buying. He can put together the same package. He has the same authorization to select different vendors as the other ones.

In some cases in that general section we get a large sub contract package. In this section is the buyer who handles all of our plant rehabilitation and the building of new buildings. In this section is the buyer who handles all of the capital equipment. They could run into a $50,000 electronic microscope for instance. In these type deals they must get together the same kind of package of substantiation as one in the sub contract area. And it can get so complicated in the general purchasing section.

[77] Q. Do the buyers have any control over any other employees employed by Bell?

A. Yes.

Q. In what way?

A. They have girls assigned to them, to a group of them. We do not have the luxury of a girl for each buyer. Of course they direct the activities of these girls in doing their work for them the way they want it done.

Q. Do they actually enter into hiring or firing or the evaluating of these girls?

A. No, except, indirectly in commenting to the girls supervisor who is Mr. Folker. If there is dissatisfaction with a particular girl we try to arrange a switch to make that personality change.

Q. Would they recommend a girl be fired?

A. Yes.

Q. Would their recommendation be followed?

A. Not automatically. It depends on Mr. Folker's judgment as to whether it is warranted or not.

They also supervise in a number of cases the salaried expeditors who are assigned to their particular project.

Q. Now that you brought them up, expeditors are also under your—not your immediate supervision but under your general supervision; is that correct?

[78] A. Yes.

Q. According to the Employer's Exhibit No. 4 they work under the administrative management of Mr. Folker?

A. Yes.

Q. And more directly under Mr. Chase the Expediting supervisor; is that correct?

A. Yes.

Q. What is the function of the expeditors?

A. It is to expedite. That's really to follow up orders.

Q. Can you give me an example of what they might do?

A. They receive a copy of the purchase order. They enter it in their file, their log.

Q. At what stage do they receive purchase orders?

A. As soon as it is typed.

Q. Has the buyer yet had anything to do with it?

A. Yes, the buyer has prepared it and had it typed and signed it and sent it out. Now the expeditor gets a copy of it.

Q. What does he do?

A. He enters a receiving report, makes phone calls, follows the buyer's instructions as to what type of follow-up might be needed.

Q. Such as?

A. Such as a phone call or such as monitoring the line [79] of balance charge or major activity milestone reports.

Q. The expeditors are also in Department [212]; is that correct?

A. Yes.

Q. Where physically in the building, where would they work in relation to the buyers?

A. In the same department, in the same office, same general office area.

Q. Now, you indicated that the buyers have either private or semi-private offices?

A. That is correct.

Q. Are they all off of a large hall? Is that it, or how would you describe it?

A. They surrounded two general areas really. These are offices that are partitioned off from the center of the large room. And in the center of the room the clerical workers sit.

Q. Where do the expeditors sit?

A. In the center of the room.

Q. In the center with the clerical?

A. Yes.

Q. How are expeditors paid?

A. We have four that are on salary and two that are hourly.

Q. What is the approximate salary of expeditors?

[80] A. I'm afraid I can't answer that.

Q. Is it less than Class 2 Buyers?

A. Yes. The hourly is less. The salaried expeditor is about the same as a Class 2 Buyer.

Q. Do the expeditors exercise autonomy in performing their task?

MR. WINCH: Now, if the Hearing Officer please, I had not wanted to interrupt but the question is directed to the witness and is intended to indicate that this might be increased to include expeditors. The company objects to that line of questioning. We think the only question before the Board is whether or not the buyers constitute an appropriate unit.

HEARING OFFICER: Because the Regional Director has to determine whether or not the unit being sought in the petition is an appropriate unit, and in light of the fact that there was testimony prior to Mr. Seitz that the expeditors and cost and price analysts work in the same general vicinity with the buyers, I am going to overrule your objection, Mr. Winch, and of course

advise you that you may take an automatic exception to my ruling.

MR. WINCH: Thank you. I do take that exception to your ruling.

HEARING OFFICER: Fine.

Q. (By Hearing Officer Palermo) So, continuing now, [81] do these expeditors exercise independent judgment at work or are they closely supervised by buyers or what?

A. They are closely supervised. I would have to say they exercise independent judgment as to whether a telephone call or telegram would be in line, to answer your question.

Q. Do they have authority to commit the Employer's credit?

A. No, they do not.

Q. Do they come in day-to-day contact with the buyers?

A. Yes.

Q. Frequently?

A. Yes.

Q. Do they receive the same general benefits as buyers?

A. Salaried ones, yes. The hourly one, I again defer to Industrial Relations.

Q. While we are on this line, how about the cost and price analyst? What is their function?

A. They review purchase order packages to make sure everything is in the package before it goes for signatures. They check audit records.

Q. Of what?

A. Of a vendor's proposal. They analyze price, analyze cost.

Q. Are there two of them?

[82] A. Yes.

Q. Mr. Starke and—

A. Starke and Victor.

Q. Are they hourly paid?

A. They are salaried.

Q. Are they paid less than or equal to or more than Class 2 Buyers?

MR. WINCH: If the Hearing Officer please, may it be understood my same objection applies to this same line of questioning?

HEARING OFFICER: Very good, and I shall overrule for the same reason and again advise you may take exception.

MR. WINCH: Exception, thank you.

THE WITNESS: I am not sure I have that here. They are in the same range with the Senior Buyers.

Q. (By Hearing Officer Palermo) With the Senior Buyers?

A. I'm afraid I can't answer that without digging a little more.

VOICE: Can I answer that?

THE WITNESS: Yes.

HEARING OFFICER: Off the record.

(Discussion off the record)

HEARING OFFICER: On the record.

Q. (By Hearing Officer Palermo) Yes?

[83] A. The question was what pay range are they in?

Q. Yes.

A. They are in the same range as a Senior Buyer.

MR. WINCH: Now, if I may interpose, Mr. Hearing Officer, I would like to have the witness clarify as to whether he is talking about actual ranges or company ranges.

Q. (By Hearing Officer Palermo) Would you do that, sir? What is the company range?

A. I'm talking about both.

Q. Do you have information there as to what the company's range is for that job?

A. These are the only two jobs of that classification in the company.

Q. What are they paid? Do you have that?

A. Yes.

Q. What is it?

A. One gets $243, the other gets $245.

MR. SCHMIT: May we go off the record?

HEARING OFFICER: Yes, off the record.

(Discussion off the record)

HEARING OFFICER: On the record.

Counsel for the Employer has indicated that they would like an opportunity to check to see the actual wage range for cost and price analyst. So, we will defer [84] answering that question until that information is obtained.

Q. (By Hearing Officer Palermo) Do the cost and price analyst have any authority to commit the employer's credit?

A. No, they do not.

Q. Do they work under the general or informal supervision of buyers?

A. No.

Q. Do they come in day-to-day-contact with buyers?

A. Yes.

Q. In the line of work?

A. Yes.

Q. Where would the cost—Mr. Starke and Mr. Victor sit? Do they also sit in the center area?

A. Not in the center area. They sit across the aisle in the next group of offices.

Q. Do they have private offices?

A. Yes.

Q. They each have a private office?

A. Yes.

Q. Do any of these employees punch time clocks? By "any employees" I mean expeditors and the analysts and the buyers.

A. At Bell everyone from Mr. Gisel, who is President, down to the lowest classification, everyone punches a time clock. I do.

[85] Q. I see. Do all the employees of Department 121 punch the same time clock?

A. I guess.

Q. Maybe I'd better qualify that. Obviously we are not including people that work in the WRO?

A. No. Depending on which parking lot they use I guess they decide which time clock is going to be the most convenient. The majority do punch the same one. There are two that generally they punch.

Q. I see. You mentioned that the WRO people—is listed on the chart PBPS WRO, Manager, J. P. Kamp.

A. That's right.

Q. Under him there are three names listed?

A. Right.

Q. Would you explain briefly where the—you call it the Western Regional Offices, WRO, is located?

A. Yes. That is Los Angeles.

Q. Are those three employees listed under that box on Employer's Exhibit 4, are they permanently assigned to Los Angeles?

A. Yes, they are.

HEARING OFFICER: All right. Mr. Laracy, do you have any questions?

MR. LARACY: Yes. I would like a short recess for about two minutes.

[86] HEARING OFFICER: Let's take a short recess. Off the record.

(Short recess taken)

HEARING OFFICER: On the record.

Q. (By Hearing Officer) Mr. Seitz, I understand that during our brief recess you obtained the wage range for the cost analyst?

A. Yes.

Q. What is the range?

A. The range is from $163 minimum to $259 maximum.

Q. That is the company's range?

A. Yes.

HEARING OFFICER: Mr. Laracy, do you want to proceed?

MR. WINCH: There are additional rates.

THE WITNESS: I have the salaried expeditor's range, which is from $141 minimum to $219 maximum.

The hourly expeditors go from $3.75 per hour minimum to $4.50 per hour maximum. There are two classes of hourly expeditors. The second class of hourly expeditors goes from $3.985 an hour minimum to $4.88 per hour maximum.

Q. (By Hearing Officer Palermo) Is the difference between the salaried and the hourly paid expeditors based on experience and education?

[87] A. Yes.

Q. Would any salaried expeditor ever hope to become salaried?

MR. WINCH: I think you misspoke.

Q. (By Hearing Officer Palermo) I'm sorry. Would any hourly expeditor ever become a salaried expeditor?

A. Yes, it is possible.

Q. Would this be the normal progression?

A. Yes.

HEARING OFFICER: Mr. Laracy.

CROSS-EXAMINATION

Q. (By Mr. Laracy) Would you say that Expeditor I and Expeditor II is the official title?

A. Class I and Class II.

Q. Expeditor I and Expeditor II. Let's start off with Exhibit No. 10, purchase requisition and procurement. Do you have a copy of that?

A. I remember—yes, I have it.

Q. Let's start with Local 1286 on the left, PR's initiated through Local 1286. How does a buyer purchase a tool or machine tool? I would assume that—well, let me rephrase that. How does a buyer receive requisitions from members of Local 1286?

A. These come into the department. First they go through the Finance Department for an audit check which merely [88] confirms that the right work order was used and the person who signed the requisition was authorized to sign requisitions. Then it comes to the procurement office where it is funneled through Mr. Muni, the focal point, who separates these into categories that go to group supervisors.

Q. Who makes up these requisitions in Local 1286?

A. In 1286 it's the production material control schedulers and dispatchers I guess their title is. But it is the schedulers that do it. Also in the Plant Engineering Department—Production Engineering Department, excuse me—these are made up by people reporting to Jim Domino, who are 1286 people.

Q. So, production schedulers make up the requisitions for production parts? Is that right?

A. No. I think I misled you. It's my fault. I think they are called material control schedulers that make up requisitions.

Q. Do they make out requisitions and determine how many parts of certain part numbers should be ordered?

A. They do not determine that. Well, I shouldn't say that. They enter the quantity on the requisition.

Q. These requisitions are then processed through the Purchasing Department and assigned to a buyer?

[89] A. That's right.

Q. Does a buyer have a choice of vendors to buy these parts from?

A. Yes.

Q. Is he ever confined to one vendor?

A. Sometimes.

Q. Does a buyer have contact with the material control scheduler?

A. Yes.

Q. How often would these contacts occur?

A. Without appearing facetious, if he cannot read the writing on the requisition or if something appears to be missing or he doesn't have the blueprint that should accompany it he will call and say he needs more information.

Q. Does a buyer ever question the fact they may not need that many parts?

A. Yes.

Q. How about machine tools and tools themselves? Who originates these requisitions?

A. There are two separate things here now. Machine tools are capital equipment. If we are talking about lathes or drill presses or something like that then these must go through management to get approval to spend capital funds. Production engineering determines the need for new tools, new machine tools, and generates the expenditure request which has to go through management to [90] get signed. Then they generate a requisition which calls for the particular tool.

Q. What personnel in production engineering performs the actual work, the drawing, the design, the blueprint and so forth? Who actually decides the need for these tools

or machines occupation-wise? We are not necessarily looking for individuals here.

A. I'm afraid I can't answer that.

Q. They are then processed through management?

A. Capital equipment. Now we get into another kind. This may not be your question. There is another kind that is requisitioned by 1286 personnel. These are the tools that a sub contractor needs to machine a part that the buyer has negotiated to be brought on the outside. The man will need a drill jig or he will need a punch die or a locating fixture or assembly fixture. When the vendor quotes this part to the buyer he will list the tools he needs to make that part and he will price these separately because these become Government property. They belong to the Government under our tool accountability program. So, these have to have controls established on them.

When a buyer gets this list of tools that have to be brought by the vendor to make the vendor's parts he sends the list upstairs to the tool control department [91] who now assigns a number to them, enters it on an EDP report and keeps track of them and sends requisitions down to authorize these tools.

Q. The buyer then has a choice of vendor?

A. Not in that case. He doesn't on that kind of tool. We may have to go outside to buy tools from stores. There may be a tool room overload at Bell. They need the tools faster than the tool room can get them out.

We will get requisitions to buy them, a kind of tool room aid for us at Bell. There we have a choice of vendor. There we send them out to the job shops that make tools and get competitive prices.

Q. In purchasing under $5,000 does a buyer ever have occasion to come up to a supervisor or Mr. Muni or you or Mr. Cleveland and discuss the matter even though it is an item under $5,000?

A. Yes. Our door is alway opened.

Q. He has occasion to discuss even purchases under $5,000?

A. Yes.

Q. You mentioned buyers have the right to cancel orders under $5,000. Why would they cancel an order under $5,000?

A. The vendor might have had a fire or strike or a breakdown of some kind and now cannot meet the delivery [92] he said he would make. The buyer cancels that order and goes and finds someone else.

Q. Somebody notified him those parts or tools are no longer needed?

A. That could happen too.

Q. He is really just following instructions here. Now, on Exhibit 10 on the right-hand side PR's initiated by twenty-six other sources, we do not take every source? Take the Engineering Lab. Who initiates requisitions there?

A. Somebody that works for George Kapelton. I don't know who these people are. He is the Chief Engineer in charge of the Engineering Labs. And the people that work for him generate requisitions for material for parts for hardware, things they want to test.

Q. They would process them through his department and he would process them to the purchasing department?

A. Yes.

Q. There to does the buyer have the choice where to buy these?

A. Yes.

Q. Aren't they restricted in many cases as to where they can buy certain equipment, electronic equipment and so forth?

A. Yes.

[93] Q. On Exhibit 4—do you have that?

A. No, I do not have it. If you will tell me what it is I will probably remember it.

HEARING OFFICER: He can share this.

THE WITNESS: Oh, it's the organizational chart?

HEARING OFFICER: Yes.

Q. (By Mr. Laracy) Under Mr. Muni, are all those people buyers?

A. Yes, with the exception of—he is not there, Dimiceli. I was going to say Lienert who is no longer with us.

Q. They are all buyers otherwise?

A. Yes.

Q. How about employees under Mr. Wing? What is their occupation?

A. They are buyers also.

Q. How about the employees under Mr. ——
A. Koningisor?
Q. Yes.
A. They are buyers.
Q. How about the employees under Mr. Hamann?
A. With the exception of Dimiseli, who has been transferred to an expeditor's job, the other four are buyers.
Q. I think you have already testified the employees under Mr. Kamp are expeditors?
[94] A. Yes.
Q. And the employees under Mr. Chase are expeditors?
A. That is correct.
Q. Well, the cost and price analysts, Mr. Starke and Mr. Victor are of course price analysts?
A. Right.
Q. With the exception of the two expeditors all these people are on salary; is that correct?
A. Yes.
Q. Now, Mr. Seitz, you mentioned overtime. Hourly people get paid time and a half for overtime?
A. Yes.
Q. What is the policy again for people who are on salary such as the buyers? Could you repeat that policy?
A. I'm afraid I have to defer to Industrial Relations. I know depending on the wage bracket it can run from time and a half to straight time or I am under the impression even less than straight time.
Q. If they are authorized to work they get an authorized rate?
A. Scheduled overtime. This rarely happens. It has not happened in several years that we could foresee a workload ahead of us so that we are going to need to work people Saturdays or something like that.
Q. How about Mr. Muni? Does he get time and a half?
[95] A. No.
Q. No overtime rate at all?
A. No. He is a supervisor.
Q. How about Mr. Cleveland?
A. No.
Q. No overtime rate for him?
A. No.
Q. How about yourself?

A. No.

HEARING OFFICER: What was the answer, I'm sorry?

THE WITNESS: No.

Q. (By Mr. Laracy) You mentioned that buyers spent some time away from the plant. Have you any idea of proportionally how much time they spend away from the plant?

A. It will have to be a guess. Off the top of my head I would say 10%, and it varies. This week as I indicated and last week we have six buyers on one project alone for the customer that are out of the plant. And in addition to that we have three others that are out of the plant this week.

Q. Is it possible some buyers spend most of their time in the plant and some travel more than others?

A. Some travel more than others. These are more the sub contract type.

[96] Q. Do these buyers ever go with other employees such as production control, expeditors, tool designers, process design engineers?

A. No, they do not. They travel generally with a management team. Procurement always shares these teams because procurement is responsible for sub contract vendors. The team consists of the Drector of Quality, the Chief Engineer, the Process Engineer, a Metallurgical Specialist. Whoever the buyer needs with special expertise to make up the team, he brings then along.

Q. Did you say Process Engineer? You mentioned some sort of a process.

A. Generally the supervisor of Process Engineering will go on such a trip.

Q. Would any of these members of the team that go out be members of Local 1286?

A. Not to my knowledge, no.

Q. On Exhibit 3 I see there are procurement buyers. None of these people were mentiond for—the twenty-five buyers are procurement buyers, are hey?

A. The term is synonymous. Procurement and purchasing mean the same thing there.

Q. None of these twent-five employees on Exhibit E 3 are procurement buyers?

A. They are all procurement buyers.

[97] Q. Well, on Employer's Exhibit 7, Page 3, it says procurement buyers cannot buy more than $50,000. On your other exhibit it says cannot buy more than $5,000.

A. In Exhibit 7 that is a flow down of a Textron policy that says buyers may sign commitments. This is the purchase order itself up to $50,000. Over $50,000 the next strata has to sign.

Q. I see. Over $5,000 the buyer has to go to higher authority?

A. From the internal control point that we have. Exhibit 7 is a corporate policy. The one that—Exhibit 8 is a departmental job description which controls our supervisory strata. I hope I made that clear.

Q. You mentioned a cost reduction program in your testimony. Does this cost reduction program just apply to buyers or does this apply to the whole plant?

A. The cost reduction program—I'm going to get jealous here—I initiated when I came to Bell in '62 for the Procurement Department. Since then we have generated a savings of 3% at least a year of the dollars we have spent. Since that time, going back four years, the company has initiated a total program. This is a team offensive to achieve leadership which applies cost reduction through employees suggestion to the whole plant. Anyone may participate by putting in some buyer cost reduction program [98] that becomes part of the overall company plan.

Q. The company would desire every employee to participate in this cost reduction?

A. That's right.

Q. Are there instruction sheets or catalogs issued department-wide for buyers to use as guides?

A. Yes.

Q. Would you explain that?

A. Exhibit 8 is one of them. These are departmental job instructions.

Q. Are there any others?

A. Yes, there are a number of them.

Q. Could you explain what they are, how many there are, what they do? They are guides to the buyer?

A. Yes, departmental job instructions.

Q. Is that the policy?

A. It is to interpret the company's policy or Government policy or ASPR policy telling us what we must do in compliance with our price contract under given circumstances.

Q. Could you give us one example of one set of instructions or catalog issue?

A. We call this a procurement manual. Every buyer gets one of these. It consists of special instructions, departmental job instructions. It could consist of a memo from Mr. Cleveland or myself for a given set of [99] circumstances, such as at Christmas time gratuities are verbotem, you do not take gratuities. This is the kind of thing that is in the procurement manual.

Q. Your job classification sheet indicates you would prefer your buyers to have college degrees. Approximately how many of your twenty-five buyers have college degrees?

A. I would have to guess. I know that some have. I know that others are working towards this. We encourage this in our management objective plan. We have six in the last year or two that have taken extension courses leading to a degree at U.B. or Niagara County. I'm sorry I can't answer as to how many have degrees.

Q. How many of your buyers belong to this purchasing association?

A. I will have to guess again. I know there are several.

Q. Several?

A. At least several. I don't know how many belong. They do not all go to all the meetings nor do I. But when I go to the meetings I see some of them there.

Q. Should a buyer, buyers listed on Exhibit E 3, need overtime or is required to work overtime, does he need authorization for this overtime?

A. I would have to say no.

Q. All parties in the purchasing department have the same working hours?

[100] A. Yes, except that—except the ones that are on the road. These work as required. We start at 8:30 and stop at 5:00.

Q. You mentioned something about monitoring. Would you explain monitoring again?

A. Monitoring is watching, making sure that things

happen the way you planned them when you sat down and negotiated a deal with the vendor. He wants to see that his milestones are met on time or that the lines of balance fill up as they should.

Q. Is this an exclusive job function of the buyer or do other employees outisde of the buyers participate in this monitoring?

A. I have to think about that one. It is the buyer's job to do this. I have to say that this is the buyer's province.

Q. Pardon me?

A. I would have to say this is the buyer's job.

Q. Do they ever work with expeditors in arriving at this material or at that?

A. Yes.

Q. Then they do work with other employees. Do they ever work with tool and die vendors?

A. Yes.

Q. Do they ever work with members of Local 1286 or [101] employees?

A. Oh, yes.

Q. That is in monitoring?

A. Well, the 1286 person might monitor the buyer if you will to make sure the buyer is monitoring the vendor.

HEARING OFFICER: Execuse me? You said the 1286 person might monitor the buyer?

THE WITNESS: That is a misnomer. The buyer through either EDP reports or copies of purchase orders or weekly shortage meetings or weekly review meetings will report the status of his order on given programs. 1286 takes this information and feeds it back to the program type people.

HEARING OFFICER: Members of Local 1286? Is that what you mean?

THE WITNESS: Yes.

HEARING OFFICER: Will take this information that has been provided by the buyers?

THE WITNESS: Yes.

HEARING OFFICER: And feed it back to what people?

THE WITNESS: I think it goes back to the production

control people who now post on their chart how the vendor is doing, how our shortages are coming along.

HEARING OFFICER: Do these members of 1286 sit down and are they briefed or does the buyer merely hand them [102] reports?

THE WITNESS: As I indicated, there are several ways in which this gets disseminated, either EDP reports which everyone has access to or by weekly sub contract review reports which the buyer issues or by weekly status review meetings at which it is visually gone over, a shortage list as to what the delivery is going to be. 1286 receives this information and makes it back to production control.

HEARING OFFICER: I think this might be—I'm a little confused and I'm worried about our decision writer here. When you say Local 1286 people you are referring to the people that work in what department in this contact?

THE WITNESS: Production control.

HEARING OFFICER: Production control people. They would be working under Mr. Kelly?

THE WITNESS: That's right.

HEARING OFFICER: What are some of the job titles these Local 1286 people have?

THE WITNESS: Production control schedulers and material control schedulers.

HEARING OFFICER: Material control schedulers work under Mr. Muni?

THE WITNESS: Yes. And to some extent tool liaison people have this kind of communication with the buyers.

HEARING OFFICER: Excuse me, Mr. Laracy. This might [103] be a good time to get this point clear. That the union while it represents these other employees that we refer to as Local 1286 it is at this current time in this instant petition seeking a separate unit; is that correct?

In other words, they are seeking the buyers as a separate unit?

MR. LARACY: That's right.

HEARING OFFICER: All right.

Q. (By Mr. Laracy) Take tool designers. Is it true tool designers monitor the vendors in that case?

A. Yes, I think it is.

Q. You also mentioned some fact-finding in your testi-

mony. If there is a sizeable package involved is it true that the buyers then have to go to a cost analyst for final approval?

A. The cost analyst is on the approval form and there is a place for him to agree or concur with what the buyer has presented before he goes to the next person for signature.

HEARING OFFICER: Would the cost analyst have the authority to overrule a buyer's proposal or—

THE WITNESS: No. He questions him. He asked the buyer where is the equal employment opportunity form signed by this vendor or where is the 633, which is the price break down, or something is missing on the check list, [104] where is it, or you did the arithmetic wrong and you'll have to do it again.

Q. (By Mr. Laracy) If the cost analyst found errors he could alter the buyer's thinking, right?

A. In a real far-fetched way I would say yes. He would go back to the buyer and question him on it.

MR. LARACY: That's all I have.

HEARING OFFICER: Do you have anything further, Mr. Winch?

MR. WINCH: No further questions.

CROSS-EXAMINATION

Q. (By Hearing Officer Palermo) You mentioned that tool designers might monitor a vendor. Would they monitor a vendor in the same way the buyers do?

A. No, this is kind of a unique thing. And it is probbably, with the exception that proves the rule, it is the buyer's job to monitor the vendor. Again through an overload condition where we have a big program starting up that needs a lot of tools designed and built for in-house use on the production form we will farm out, sub contract if you will, the tool design of a given number of tools.

In this case the liaison is conducted by tooling experts who guide the outside tool design outfit as to what kind of equipment the tool is going to be used on to make sure that it is being designed in a way that this [105] tool

will be useful when we get it. That is kind of a unique situation wherein the tooling people have a direct connection with the vendor.

Q. Would the tool designer also be concerned with meeting the monument date?

A. Milestone date, yes.

Q. They also do this?

A. Yes.

HEARING OFFICER: I have no further questions.

CROSS-EXAMINATION

Q. (By Mr. Laracy) In the case of machine procurement is it true an engineer in machine equipment, an employee in Local 1286, does the monitoring?

A. Which kind are you talking about? The capital equipment? The lathes or jig bores?

Q. Yes.

A. I don't believe that is true, no.

Q. The buyer does it in that case?

A. Yes.

Q. You say that is not true?

A. I don't believe so.

MR. LARACY: All right. That's all I have.

MR. WINCH: That's all.

HEARING OFFICER: All right, sir. You may step down.

[106] (Witness excused)

HEARING OFFICER: Mr. Winch, do you have any further witnesses?

MR. WINCH: Yes, I have another witness. Mr. Cleveland, please.

Whereupon,

HARRY H. CLEVELAND

was called as a witness by and on behalf of the Employer and, after having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Winch) Would you state your name, please?

A. Harry H. Cleveland.

Q. Mr. Cleveland, will you state for the record your experience in procurement?

A. Well, I have been associated with Bell for twenty-eight some odd years, and about 15% of that time I have been associated with the procurement activity.

Q. You are now the assistant director of procurement shown on Exhibit 4 of the organization chart?

A. I am.

Q. There has been some testimony but very little concerning management by objectives. Will you explain the part which the buyers play in formulating departmental [107] goals and implementing that program?

A. Well, I guess the technique of trying to manage by objective is to make sure that the performance of a department operates pretty much in compliance with the profitability of the corporation. What we have done is that we consider members of management. We have the buyers participate in establishing objectives. And these objectives as I say always are pointed towards making sure the company operates in a profitable condition.

Buyers establish these targets and measure themselves against it. This is worked in conjunction with supervision. I think the key part is we expect the buyer to participate heavily in this endeavor, which they do.

Q. What form do their suggestions take?

A. Well, they motivate themselves toward doing a better job. As far as procurement is concerned, making sure that they operate with the company in mind and cost savings. And having the company in mind they motivate themselves toward work simplification, towards professional development. They motivate themselves to making sure we eliminate as much human error as possible within the structure.

Q. So much for the general gist. Now the question. Now I want to take a specific project which I know as Minute Man. I guess it has another name?

A. PBPS, which is—

[108] Q. Would you explain what that project is?

A. Well, the Minute Man program is, I believe as we all know, is the number one deterrent in the weapons systems arsenal of the Government. We play a major part in this program, the Minute Man program. We produce what we call a post boost propulsion system. This obviously provides to a great extent the power and steerability of this particular missile.

Q. What part do the buyers play in this program?

A. We play a very significant part, a very major part. If I can relate this in terms of dollars, for probably a given year this represents in excess of $20,000,000. We buy the majority of the sub systems. That we then ship into Bell and Bell in turn makes—performs the systems interface.

Q. Do buyers participate in teams in connection with this program?

A. In a majority of instances in procurement of this nature we do have a complex procurement team set up consisting of members of management from engineering, from quality assurance, from manufacturing and from some of the other functional disciplines, finance. Generally speaking these people are supervisory type personnel.

Q. And do the buyers lead some of these teams or tell me more about the operation of them.

[109] A. Well, the buyer is the principal or chief spokesman for the sompany. He has working for him when he is on the road or when he has any contact at all with the supplier be has the role of chief spokesman. He leads the discussion. He is the negotiator in these instances.

Q. He negotiates with the vendor?

A. Yes.

Q. In conjunction with the other management members of the team?

A. Yes.

Q. What role does the buyer play in fact-finding?

A. Again the buyer is the chief responsible person to determine what area of course are related to the

particular proposal. In other words, he investigates after he reviews the proposal what inconsistencies might exist inasfar as the person understanding what is to be done. And in doing this he requires a complete knowledge or needs to have a complete knowledge of the cost element, the type of labor being used, the category of the labor, the type of material that might be appropriate to perform that particular function.

Q. Once the contract is made for the materials to be or whatever is to be procured what further responsibility does the buyer have if any?

A. After the contract is once negotiated, it is then [110] the buyer's responsibility to make sure that total performance is made against this particular contract that is negotiated. When I say "total performance", nothing is compromised. We do not compromise quality. We need 100% reliability. He has the responsibility of calling as he feels necessary the various functional such as quality engineering, such as the metallurgical lab in order to make sure that the parts are in conformance with the requirement.

Q. In making these calls does he communicate with supervision in these various departments or whom?

A. I would say generally because of the complexity of the program we are talking about, which represents a preponderance of our efforts right now, that the contact is generally made with the supervisory level.

MR. WINCH: That is the situation with respect to the Minute Man program.

Mr. Hearing Reporter, I will ask you to mark as an exhibit for the Employer this inter-office memo dated February 19th, 1970 from Mr. Seitz to Mr. Willcox. Attached to it is a list entitled Procurement Sub Contract Teams.

(The document above-referred to, was marked Employer's Exhibit 11 for identification)

Q. (By Mr. Winch) I show you, Mr. Cleveland, Employer's Exhibit No. 11 for identification and ask you to explain the [111] composition of the teams, the procurement sub contract teams, and the function that they play in the Minute Man program?

HEARING OFFICER: You might begin, sir, by explaining for the record what Exhibit 11 is.

THE WITNESS: Okay. The Exhibit 11 has to do with the establishment of a sub contract team as we know it at Bell Aerosystems.

HEARING OFFICER: And it is a memo to Mr. Willcox from Mr. Seitz? Is that correct?

THE WITNESS: That is correct, sir.

Q. (By Mr. Winch) Who is Mr. Willcox?

A. He is the Vice-President of Finance.

Q. All right.

A. I might say this is a typical example of a team setup. It does not represent the PBPS program sub contracting activity in its entirety. We place special emphasis on these four items for the simple reason they are high in dollar value and they are one of the new items that we are purchasing.

Q. What are the four items?

A. P106 Accentuator, CD24 Shell, Axial Engine, and P107 Cable Assembly. These are multi-million dollar contracts.

Q. Now, will you explain who the personnel are composing these committees and who the buyer is in each instance and [112] what function he plays?

A. The buyer is classified as a Senior Buyer under the A16 Classification, and he plays the role of team chairman. He is the one that leads the discussions. He is the direct interface with the supplier. He is the only one that can commit the company. He is the only one that the supplier listens to as far as authority is concerned.

Q. Now, take a look at the composition of the team and explain who the other members are, what their jobs are.

A. His team that represents him in certain areas of discipline. When we talk about pricing and negotiations the finance man, Mr. James Huber is the manager of the financial review.

Q. He is a member of supervision, is he?

A. Yes, he is. His job is to specifically investigate the rates as it applies to overhead, burdens and et cetera.

HEARING OFFICER: Could you explain what you mean by "rates"?

Do you mean the vendor's overhead allocation?

THE WITNESS: Right. He is structured in two ways, by what he pays to the personnel in the form of what we call "direct hour rates", and he also investigates the application of the overhead, the G and A which means General and Administrative, any sundry cost that the particular supplier has that he cannot charge directly.

[113] HEARING OFFICER: Would Mr. Huber do this by auditing the vendor's books?

THE WITNESS: Yes.

The next functional department is Quality Assurance. And on this team is Mr. Donald Spurling. He is the Director of Quality Assurance.

Incidentally, Mr. Huber and Mr. Spurling are members of the entire four teams that we have set up.

In engineering we have four different specialists representing each one of the procurements as I mentioned previously.

Q. (By Br. Winch) Who are they?

A. Generally they are systems engineers of a certain capacity. In one case the individual is the assistant chief engineer of propulsion systems.

The next area of discipline is what we refer to as Data Management, commonly referred to as soft ware support. The man there is Richard Keil. He is the manager of Data Management.

The other area is Configuration Management. And in one instance we have the manager and in all other instances we have the assistant manager.

HEARING OFFICER: What is "configuration management"?

THE WITNESS: Configuration management is making sure [114] that the configuration of the end product being sub contracted does not change from generation to generation or from article to another. In understanding the aerospace procurement, we are the prime contractors. We understand the entire system and what they are supposed to perform. We delegate to the sub contractor

only that authority that pertains to particular items being sub contracted. In some instances what he feels may be a mediocre sort of change can abort the entire system. So, we have absolute figure control.

We have found that if a man indiscriminantly used a different solvent than what we had previously he could contaminate the whole system, even though he that would have no adverse effect.

There is a lot of management included with these programs for unquestionable reliability. The next department is what we refer to as Program Management. It is called Program Office here. These people generally are the interface with the customer. They are a part of this team, and in all occasions the three individuals are contract managers. They have the title of sub contract management.

In manufacturing engineering these are the ones that assist us in making sure that the productivity of the vendor is at a maximum. And in all cases these people [115] are members of the manufacturing engineering department as opposed to straight manufacturing.

Q. (By Mr. Winch) Would those men be supervisors also?

A. I think they are referred to as group leaders. I know two of them are. I don't know about Mr. Henneberger.

Q. And in each instance the head of the committee is the buyer I understand?

A. Yes, he is what we refer to as the chairman. He is the catalyst that puts the entire thing together.

MR. WINCH: I offer Employer's Exhibit 11 into evidence.

HEARING OFFICER: Mr. Laracy, any objection?

MR. LARACY: No objection.

HEARING OFFICER: It is received into evidence.

(The document above-referred to, heretofore marked Employer's Exhibit 11, was received into evidence)

HEARING OFFICER: Mr. Cleveland, you mentioned —I am sorry, Mr. Winch. Are you finished?

MR. WINCH: I haven't but go ahead.

HEARING OFFICER: With respect to this?

MR. WINCH: Yes.

HEARING OFFICER: You mentioned that the buyer was the spokesman for those teams?

THE WITNESS: Yes.

[116] HEARING OFFICER: Yet under Mr. Huber I notice in parenthesis is written "Chief Negotiator". What does Chief Negotiator under Mr. Huber's name on Employer's Exhibit 11 mean?

THE WITNESS: These particular areas and only these four particular areas we have a dual setup in which Mr. Huber performed more than just the cost analyst sort of work. He actually participated in the discussions relevant to price.

HEARING OFFICER: Okay, fine. Mr. Winch?

Q. (By Mr. Winch) This Minute Man program is how substantial a part of the company's business?

A. It represents about 70% of our present sales.

Q. Do the buyers play a somewhat similar part in the conduct of other programs, other projects?

A. Yes.

MR. WINCH: That's all for me.

HEARING OFFICER: I'm sure it's in the record, but what does PBPS mean?

THE WITNESS: PBPS, Post Boost Propulsion System.

HEARING OFFICER: That refers to the Minute Man project?

THE WITNESS: That is a part of it. It provides the steerability of the missile itself.

HEARING OFFICER: Fine. Mr. Laracy?

[117] MR. LARACY: Yes.

CROSS-EXAMINATION

Q. (By Mr. Laracy) This management by objectivity, is that confined to the Purchasing Department?

A. Yes, sir—I'm sorry. Management by objective, the program we have is confined to purchasing. Management does have a management by objective program for managerial personnel. We have reduced this now to the buyer level.

Q. You have one for the Purchasing Department?

A. Yes.

Q. Do other departments have similar programs for their own department? In other words, production control or project engineering and so forth?

A. Not to my knowledge, not a formal one like the one we have.

Q. Now, if you were going to buy a sub system for this Minute Man program who initiates the requisition for such a system?

A. The requisition is initiated by the material control group.

Q. Material control?

A. Yes, sir?

Q. Would these be members of Local 1286 that initiate these requisitions?

A. Yes, sir. I would like to qualify this. The [118] requisition that they initiated just by a line item. It does not necessarily give the complexity of the purchase order itself as far as terms and conditions and related things.

HEARING OFFICER: Explain what a "line item" is.

THE WITNESS: We would get instructions from material control that would in effect say by X number of pieces of a particular sub system. And they would give us the drawing us the drawing number, if you will, and then we will—

HEARING OFFICER: You mean the blueprint number?

THE WITNESS Yes, sir, and some of the other related documentation. Then we have to take this and break it down as we understand it in the form of what we really want to buy, you know, to what extent we want to purchase this item. And we have to take and convert this into a workable request for quotation or a request for proposal.

The similarity between the purchase order document and the purchase requisition is of a great magnitude. In other words, if I could describe it in the number of pages I would say I would get a single line item on a requisition and by the time the purchase order gets out it would probably be a fifteen-page document.

HEARING OFFICER: Continue.

Q. (By Mr. Laracy) When you say "we", who are you referring to?

[119] A. I guess the procurement department.

Q. Yourself, Mr. Seitz, the buyers?

A. Well, I feel that the buyer maintains, again, as a member of management, wide latitude in the preparation of all of his supporting information. As a matter of fact, he actually is the one who prepares it and gives it to us for review. I depend heavily on the buyer to make sure he is the one that prepares the document. He is the one that is going to negotiate. He is the one that is going to make sure the program is managed properly.

We expect this particular individual to be knowledgeable of the entire contract.

Q. After he prepares it do you review it with him?

A. At structure or as indicated in the strata if it is over $5,000 we review it.

Q. You have four buyers assigned to this project?

A. This particular item that we are talking about. This sheet here, that's for buyers. As I indicated earlier this is only a portion of the PBPS program. We buy many more complex parts than what is listed on this exhibit or this exhibit.

Q. The four buyers involved are Mr. Pearson, Mr. Pfeil, Mr. Morris and Mr. O'Bresly?

A. Yes, sir.

[120] Q. Are they Senior Buyers?

A. Yes, sir.

Q. As listed on Company's Exhibit E 3. In Exhibit E 11 the first item, which is P106 accentuator, what is Mr. Huber's function?

A. Well, as I indicated to Mr. Palermo, his function is to explore the cost elements that are associated with this procurement. Generally speaking his area is confined to looking at the rates, the actual rates that are paid the various employees, the various overhead rates, the general and administrative rates, and areas of this type.

But because of the complexity in dollars, if you will, of this particular procurement, since I indicated earlier

it is a multi-million dollar package that we are talking about, he participated with the buyer.

Q. He is the Chief Negotiator in dealing with the vendor?

A. In these particular cases.

Q. What is the chairman's title? What is the chairman's function?

A. Well, the chairman participated—he is the official spokesman for the company. In other words, only procurement can commit. Obviously since only procurement can commit his are the instructions the vendor listens to. The chairman is the official individual as far as company [121] management or Bell Aerosystems management representative.

Q. He commits only upon the recommendation of the committee?

A. I guess if we get total agreement to commit, yes.

Q. But he cannot commit over $5,000?

A. I guess I have to take you back to what we have established as the negotiating objective. What we do prior to our actual physical contract with the vendor, before the start of negotiation we have what we call pre-negotiations. This is done on a team concept in which if it is over $5,000 he has other members of procurement in there. So, what we do, if we are all in complete concurrence with the negotiation objective, then the buyer actually carries the ball from there on in. In other words, the vendor himself doesn't know whether the buyer can or cannot commit up to $5,000. He has final word as far as the vendor is concerned. It is only an internal mechanism that we have here that the buyer is more than—the seller is more than likely unaware of.

Q. I have here a letter dated February 12th, signed by you. I would like you to look at it and maybe explain this. I will produce it as evidence. I do not have extra copies. This will be Petitioner's Exhibit No. 1.

[122] (The document above-referred to, was marked Petitioner's Exhibit No. 1 for identification)

Q. (By Mr. Laracy) Would you identify that letter, Mr. Cleveland?

A. Sure. This is a memorandum that I issued and approved by Mr. Seitz to all buyers. And this is dated February 12th, 1970. The reference or the title is that compliance with DJI 121-300 is mandatory. It pretty much establishes I guess what I indicated earlier as far as a pre-negotiated position in which we want the buyers to be sure if they were going to represent the company on these items over $5,000 that they had our concurrence.

Q. Could you read the rest of the letter? It is a short letter.

A. I guess I better start over again. "Compliance with the reference DJ1 is mandatory. Negotiations, under no circumstances, are to be conducted until a pre-negotiation position is established and reviewed with cognizant procurement management. In addition, effective immediately, all procurement negotiations that fall within the criteria as set forth in the reference DJ1 will be conducted in procurement conference room 1000. In the event of a conflict Miss Jeanne O'Neill will arrange for a suitable alternative.

[123] HEARING OFFICER: What is DJI?

THE WITNESS: Departmental Job Instruction.

Q. (By Mr. Laracy) These were issued to all buyers?

A. Yes. As a matter of record, DJI 121-300 is a matter of record.

MR. LARACY: I don't have a copy of that letter so I will have copies made.

HEARING OFFICER: Off the record.

(Discussion off the record)

HEARING OFFICER: On the record.

Q. (By Mr. Laracy) Mr. Spurling, what is his title?

A. Director of Quality Assurance.

Q. What is his function in these negotiations?

A. To maintain visibility with regard to the quality of the product being purchased.

Q. Mr. Fredericks, what is his title?

A. Mr. Fredericks is—I don't know exactly what his title is but I know he is with engineering, and he is more than likely referred to as a systems engineer.

Q. And Mr. Kil, what is his title?

A. He is manager of data management.

Q. Mr. Kielbasa?

A. Mr. Kielbasa is assistant manager of configuration management.

Q. And Mr. Morgante?

[124] A. Mr. Morgante is program manager. This specific duty relates to the sub contracting portion of the program.

Q. Is it true, Mr. Cleveland, contracts over $50,000 must have Mr. Huber's approval?

A. Yes, sir. He acts in advisement for the Vice-President of Finance, Mr. Willcox.

MR. LARACY: That's all I have?

HEARING OFFICER: Mr. Winch.

MR. WINCH: Yes.

Will the Hearing Reporter please mark this Exhibit for identification?

(The document above-referred to was marked Employer's Exhibit 12 for identification)

REDIRECT EXAMINATION

Q. (By Mr. Winch) The Union's Exhibit E 1 refers to DJI, Departmental Job Instruction, No. 121-300. Is Employer's Exhibit 12 for identification the particular document referred to as DJI 121-300?

A. Yes, sir.

Q. Now, we also have in evidence Exhibit 8 which is DJI 121-304. Will you explain the difference between those two exhibits?

A. The memorandum that the union introduced as their exhibit referred to BAPP 121-300 entitled "Preparation For [125] Initiation Of a Sub Contract". The particular memorandum that I prepared with Mr. Seitz' approval is applicable to this DJI.

I might just read the scope of this DJI. It says: "Application of this DJI is mandatory on all procurement anticipated to exceed $50,000." Mr. Winch asked for an explanation of 121-300 and 121-304.

Q. And does this, Employer's Exhibit 12, explain the procedure and responsibility of the buyer?

A. I think in order to get a thorough understanding of it you have to refer to both of them, 121-304 and 121-300. For instance the title on 121-304 is called "Signatory Approval Commitment Authority Request". This Item delineates the stratification of signatory authorization requirements that the buyer operates within.

Q. I refer you to Page 2 of Employer's Exhibit 12 for identification and ask you to read into the record Paragraph No. 7 under Roman Numeral III, the procedure and responsibility.

A. "Roman Numeral III Procedure and Responsibility, Item 7, as Chairman, conduct negotiations with the potential sub contractor, in consonance with information and decisions rendered under foregoing items of procedure. In addition, the cognizant supervisor will participate in all significant sub contract negotiation sessions within the scope of [126] this DJI. When deemed necessary, the purchasing agent and/or the Assistant Director of Procurement will also participate."

Q. Then will you also read Paragraph 9 under 3?

A. Under Roman Numeral III, Item 9, again referring to and directing itself to the buyer, it says: "Issue a definitized purchase order or sub contract based on the results of the foregoing negotiations."

MR. WINCH: I offer Exhibit 12 for identification into evidence.

HEARING OFFICER: Mr. Laracy, any objection?

MR. LARACY: I haven't seen it yet but I don't think I will.

HEARING OFFICER: I'm sorry.

MR. WINCH: I'm sorry. That time I missed you.

MR. LARACY: No objection.

HEARING OFFICER: Employer's Exhibit 12 is received into evidence.

(The document above-referred to, heretofore marked Employer's Exhibit No. 12, was received in evidence)

MR. WINCH: You may ask. I have no further questions.

HEARING OFFICER: Mr. Laracy?

MR. LARACY: No. That's all I have.

HEARING OFFICER: Thank you very much, Mr. Cleveland.

[127] (Witness excused)

HEARING OFFICER: We are going to call a five-minute recess here to let the—among other things, so you can make a copy of Petitioner's 1.

MR. LARACY: I was going to say I doubt if we will finish. What time are you people prepared to stay until?

HEARING OFFICER: Off the record.

(Short recess taken)

HEARING OFFICER: On the record.

MR. LARACY: I would like to have the record show that this adjournment was granted solely for the purpose of giving the union an opportunity to produce evidence that the buyers are not managerial employees and for no other purpose.

HEARING OFFICER: I don't know what you are doing. Are you making a motion?

MR. WINCH: I will. I understand that this is what you told the union and I wanted the record to show it.

MR. LARACY: If I should stumble on or discover any other evidence you can rest assured we will present it. We will not be confined to any such stipulation as that. That is our intention. However, if we find more evidence we will present it, and I'm sure if you find more you will present it and I could not object.

HEARING OFFICER: To that end, Mr. Winch, this is [128] non-adversary proceeding. Our sole purpose here is to develop a complete record so that the Regional Director may make an intelligent decision with respect to the petition. Therefore I dont' see how I could possibly expect to hold the union to such a stipualtion.

MR. WINCH: In that case, if the union agrees—if the union intends to bring in other evidence, in view of the fact the sole issue appears to be as to whether or not the buyers are managerial employees, I will request the union to notify us so that we will not be taken by surprise.

MR. LARACY: Let me ask you this. In my presentation next week how would you know what evidence I would propose or what evidence I wouldn't? Do you want me to tell you this is what I am presenting this week or this is what I won't?

MR. WINCH: I want to know what charge you will have. You are the one that petitioned. We came in and proved our case for you and the evidence is in the record for the Regional Director.

MR. LARACY: We'll present our case next week.

MR. WINCH: If you have another issue, will you advise me prior to the hearing, please?

MR. LARACY: Our position is the same, that these buyers are members of the Act and that we want an appropriate unit. As of now that is my position. [129] Evidence may be introduced that may make me change my mind. Right now my position is the same as it was this morning, that these people are employees under the Act and that an appropriate unit consists of all buyers, twenty-five of them.

MR. WINCH: I will say that if the union attempts to introduce evidence for any purpose other than to prove that the buyers are not managerial employees, we will not be ready to proceed. We will ask for an adjournment and expect to have it granted.

HEARING OFFICER: Let's go off the record for a moment.

(Discussion off the record)

HEARING OFFICER: Back on the record.

During an off-the-record discussion it was agreed that the hearing will be postponed until September 3rd at 10:00 o'clock in the morning.

MR. WINCH: We did not agree with that. The Hearing Officer ruled that.

HEARING OFFICER: All right. Let's say the Hearing Officer ruled the hearing will be adjourned until September 3rd at 10:00 o'clock in the morning in the same hearing room at the Buffalo Regional Office. At that time the Hearing Officer will be prepared to hear any and all relevant testimony which may be presented by the parties.

[130] The hearing is now adjourned until September 3rd at 10:00 o'clock.

(Whereupon, at 4:25 o'clock, p.m., the hearing in the above-entitled matter adjourned, to reconvene Thursday, September 3rd, at 10:00 o'clock, a.m.)

* * * *

[133] PROCEEDINGS

HEARING OFFICER PALERMO: On the record. Prior to reconvening this second part of our hearing, the Employer indicated there were certain corrections that he wanted to make in the transcript of the last session of this hearing. So, Mr. Winch, would you please restate for the record at this time what corrections you would like to have made?

MR. WINCH: Yes.

At Page 11 of the record a reference is made to the fact, and I quote: "Mr. Hurst being an Executive Vice-President reports to the Secretary of the Company, Mr. William Gisel." Mr. Gisel is the President of the Company. The word "Secretary" should be "President". I move to amend the record so as to make the word "President" instead of "Secretary."

HEARING OFFICER: Mr. Laracy?

MR. LARACY: No objection.

HEARING OFFICER: Hearing no objection, the amendment is allowed.

MR. WINCH: The next one is on Page 60 where in Line 20 the question is "Would you determine from whom he would solicit this, regardless of the cost, even if it were more than $5,000?" The second word "you" should be "he." I move to have the word "you" changed to "he".

HEARING OFFICER: The word "he" referring to a buyer?

[134] MR. WINCH: Correct.

HEARING OFFICER: Mr. Laracy?

MR. LARACY: No objection.

HEARING OFFICER: Hearing no objection that correction is also admitted.

MR. WINCH: At Page 96 of the record there is an

answer starting at . . . I will call it Line 4: "No, they do not. They travel generally with a management team. Procurement always shares these teams. . . ." The word "shares", s-h-a-r-e-s, should be "chairs", c-h-a-i-r-s. I move to correct the record to make the spelling correct.

HEARING OFFICER: Mr. Laracy, do you have any objection?

MR. LARACY: No objection.

HEARING OFFICER: Hearing no objection, that is permitted.

MR. WINCH: Then on Page 114 of the record in Line 39—well, let's start at Line 11. "We have found that if a man indiscrimanantly used a different solvent than what we had previously he could contaminate the whole system, even though he. . . ." The word "thought" should be inserted at that point, "even though he thought that would have no adverse effect." Imove to amend the record to insert the word "thought" between the words, "he" and "that" in the quoted sentence?

[135] HEARING OFFICER: Mr. Laracy?

MR. LARACY: No objection.

HEARING OFFICER: Hearing no objection, that is permitted.

MR. WINCH: Thank you.

HEARING OFFICER: Mr. Winch, also before we went on the record, you indicated that you wanted to amend the company's position with respect to the instant petition?

MR. WINCH: Yes.

In reading the record I find at Pages 102 and 103 starting at the very bottom of the page, the following exchange: "HEARING OFFICER: Excuse me, Mr. Laracy. This might be a good time to get this point clear. That the union while it represents these other employees that we refer to as Local 1286 it is at this current time in this instant petition seeking a separate unit; is that correct?

"In other words, they are seeking the buyers as a separate unit?

"MR. LARACY: That's right."

Now, in view of that the Company withdraws the objection that it has made to community of interest. Com-

munity of interest no longer applies when you are talking about a separate unit of buyers. So, the Company's position in that respect is different than it was at the conclusion [136] of the hearing last Friday.

HEARING OFFICER: Then if I understand your position correctly, Mr. Winch, it is now the Company's position that the unit now is not appropriate because the buyers being sought in this petition are managerial employees and they are excluded?

MR. WINCH: That is correct. As far as I am aware that is the only issue before the Board.

HEARING OFFICER: Okay, fine, very good.

Mr. Laracy, I believe when we left off the last time it was your turn to start introducing witnesses?

MR. LARACY: Right. I would like to call Mr. Miranda to the stand.

Whereupon,

JOHN R. MIRANDA

was called as a witness by and on behalf of the petitioner and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Laracy) Mr. Miranda, would you give your name and occupation?

A. John R. Miranda. I am a Class 3 Tool Designer at Bell Aerospace.

Q. How long have you been employed at Bell Aerospace?

A. Since 1942.

[137] Q. And what is your occupation now?

A. Class 3 Tool Designer.

Q. How long have you held this occupation?

A. Some 20 years, I guess.

Q. Are you active in union affairs at your plant?

A. Yes, sir, I am.

Q. What is your union title right now?

A. I am President of the Amalgamated Local 1286 and President of the "PETA" unit.

Q. Could you fill-out the initials there?

A. Production Engineering Technical Association is the unit.

Q. Will you give the background of your union activities?

A. Since around 1950 I have been a steward, I have been a committeeman, I have been a Vice-President and President. I have served in all of the chairs so to speak of our structure.

Q. How many years have you been President now?

A. I believe it's about nine or ten years.

Q. Are you President of the four units there, the four units established there?

A. I am the Local Amalgamated President now, sir.

Q. Could you describe the different units and also the bargaining history there briefly?

A. We have four units. We have a production and material [138] control unit. They are production control men. We have an estimator's unit. We have a loft unit, and we have the production engineering technical association, which is the unit that I am in.

We have several classifications in the production engineering technical association. We have tool designers, production planners, tool expeditors. We have liaison men.

Q. Approximately how many are in that unit now?

A. In our unit?

Q. Yes.

A. Oh, there are approximately forty-five people in our particular unit.

Q. How about the mold loft?

A. Mold loft, there are two at this time, two people in the mold loft unit.

Q. How about production engineering material control?

A. There are some forty-five. And in the estimator's unit there are some twenty-seven or eight, I believe.

Q. How do you bargain for these groups? Is there collective bargaining or does each unit bargain for their own group?

A. We have collective bargaining. The four units meet in the same room.

Q. At the same table?

A. Yes.

[139] Q. Each unit has its own representation?

A. Yes, sir. We have four separate contracts. Each contract provides for its own bargaining committee.

Q. Each unit ratifies its own contract?

A. Yes, sir, they do.

MR. LARACY: At this time it may be appropriate to introduce the contracts for each group along with a supplement signed June 26th. It is the financial supplement I understand.

So, maybe for the record, Mr. Miranda, can you identify this contract?

Mr. Hearing Officer, this will be Petitioner's Exhibit No. 2.

(The document above-referred to, was marked Petitioner's Exhibit No. 2 for identification)

THE WITNESS: Yes. This is the common letter that each President got in reference to the economic adjustments to the last contract.

Q. (By Mr. Laracy) What is the date of that?

A. The date here is June 26th, 1970. And these are the contracts that were updated for the latest negotiation. They were dated July 1st, 1967 to July 5th, 1970. These are the four contracts that comprise Local 1286.

HEARING OFFICER: Excuse me. Let's go off the record.

[140] (Discussion off the record)

HEARING OFFICER: On the record.

MR. LARACY: This one will be marked Petitioner's Exhibit No. 3.

(The document above-referred to, was marked Petitioner's Exhibit No. 3 for identification)

MR. LARACY: This will be Petitioner's Exhibit No. 4.

(The document above-referred to, was marked Petitioner's Exhibit No. 4 for identification)

MR. LARACY: This will be Petitioner's 5.

(The document above-referred to, was marked Petitioner's Exhibit No. 5 for identification)

MR. LARACY: And this will be Petitioner's Exhibit No. 6.

(The document above-referred to, was marked Petitioner's Exhibit No. 6 for identification)

HEARING OFFICER: Could you identify Petitioner's Exhibit No. 3, Mr. Miranda?

THE WITNESS: Yes. This is the contract that the Production Control Office and Material Control Office unit has been working under. It has been recently updated for the latest negotiations.

Q. (By Mr. Laracy) Could you identify Petitioner's Exhibit No. 4?

A. 4 is the contract that describes the agreement of the [141] Estimator's Unit.

HEARING OFFICER: Off the record for a minute.

(Discussion off the record)

HEARING OFFICER: On the record.

Go ahead, Mr. Miranda.

THE WITNESS: Exhibit No. 5 is the contract of the Mold Loft Unit, and Exhibit No. 6 is the contract of the Production Engineering Technical Association Unit.

HEARING OFFICER: Now, so that the record is clear, Petitioner's Exhibit No. 2 is the letter, is that correct, that was sent to the President of these four separate units dated June 26th, 1970?

THE WITNESS: Yes, sir.

HEARING OFFICER: And while we were off the record we decided each of the four contracts that were introduced would be given a separate number. So, we have therefore Petitioner's Exhibits 2 through 6 that have just been introduced?

THE WITNESS: Yes.

HEARING OFFICER: All right.

Q. (By Mr. Laracy) Mr. Miranda, I notice in each one of these contracts each unit has its own President?

A. That is right.

Q. Each group elects its own President?

A. Yes, sir.

[142] Q. Are you the overall President of the four unit?

A. I am.

Q. The four units elected you?

A. Yes.

Q. Now, Mr. Miranda, are you familiar with the buyers that we have been petitioning for in this proceeding?

A. I am.

Q. Have you worked with the buyers?

A. I have on occasions personally worked with some of them. And I do know of our relationship, the relationship of our employees in our unit. I know of the relationship they have commonly with the buyers.

Q. You petitioned for Local 1286 for the buyers?

A. Yes.

Q. It is your understanding that the buyers will—if the Board decides they are an appropriate unit they will be in a unit within your local; is that right?

A. That's right, sir.

Q. Mr. Miranda, I would like to show you the buyer's job description. I know you are probably familiar with it. Would you look at it and familiarize yourself with it since this is Company's Exhibit E 5 and 6?

A. As far as I know these are the current job descriptions of Buyer Class 2 and Buyer Senior, yes.

Q. In your opinion do they fairly describe the duties [143] as they are being performed by the buyers now?

A. I am not totally familiar with the intricacies of these classifications, but they do read like I understand them. And I think they are descriptive of the jobs.

Q. With your years experience and as President of the Local here are you familiar with the National Labor Relations Boards definition of Clerical, Technical, Professional employees, Supervisors and so forth?

A. I would say I was familiar with it. I am no authority on it, naturally. I read it several times. There is always some mystery attached to it.

Q. Would you classify these buyers as supervisors or managerial?

A. No, I would not.

MR. WINCH: I object to it as calling for a conclusion which the witness cannot make. He cannot make that judgment on his own.

MR. LARACY: The witness has been active for years in Board proceedings. He petitioned for them. He works with them.

HEARING OFFICER: That's true. However, I will sustain Mr. Winch's objection on the grounds that in my opinion it is calling for a conclusion of the witness. However, if you would like to develop this, you know, through different questions, you may be free to do so.

[144] Q. (By Mr. Laracy) In your opinion, can the buyers formulate, determine or effectuate the employer's policy?

MR. WINCH: I object to that on the same grounds.

HEARING OFFICER: Mr. Winch, I will agree that the questions calls for a conclusion on the part of the witness. I am going to allow the witness to answer that. I am hopeful that he will be able to develop additional testimony to explain why he feels that way. And of course you have an automatic exception.

MR. WINCH: Thank you. I will take my automatic exception to this line of questioning.

THE WITNESS: I would say the answer to that question would be no. The reason I say no is because by comparison to the duties that we have and the personnel in our units, I would say if they are managerial employees we would certainly have to be managerial employees. We are not managerial employees. We make decisions. We have more latitude in making our decisions. We make them solely on our own judgment. If this is the basis by which you determine managerial employees, as far as I know buyers are not managerial employees.

Q. (By Mr. Laracy) Do buyers conform to the employer's set policies and set procedures?

A. Yes, they do.

HEARING OFFICER: Excuse me, Mr. Laracy. I do not mean [145] to interrupt your line of questions, but is it your intention to also develop by the witness—

MR. LARACY: We are going to get into details on Mr. Miranda and his people's contact with the buyers.

HEARING OFFICER: For example, the Hearing Officer would be interested in knowing, you know, why he feels that the buyers, you know, do not exercise wide autonomy.

MR. LARACY: We intend to get into that by putting in further evidence to show its context. These purchases are made through his department and the buyers are in between. We are going to produce—going to introduce evidence on this in a few minutes.

Q. (By Mr. Laracy) Does the Bell Aerospace Company have any manufacturing establishment in Texas?

A. Yes, they do.

Q. Do you have contact with that local union?

A. I do with a couple of fellows that are officers in Local 317, Lloyd Cox, who is President, and Delbert Alan, who is Committeeman.

Q. How do you contact these people? What manner are these contacts?

A. We have occasions at least twice a year to meet at conventions of the UAW. And then I have called the President Lloyd Cox for information that would be helpful to our negotiations and such as that. I don't know the frequency [146] of it but I imagine I call him maybe every second or third month. We have occasions to check notes to find out what is working and what is not so we can get the benefit of their experience.

Q. Do you have personal contacts?

A. We have personal contacts and meet at UAW meetings or UAW pre-negotiation committees.

Q. Do you exchange information?

A. Yes, we do.

HEARING OFFICER: Off the record.

(Discussion off the record)

HEARING OFFICER: On the record.

MR. LARACY: I would like to introduce Petitioner's Exhibits 2 through 6 into evidence.

HEARING OFFICER: Any objection?

MR. WINCH: No, no objection.

HEARING OFFICER: The exhibits, Petitioner's Exhibits 2 through 6, are received into evidence.

(The documents above-referred to, heretofore marked Petitioner's Exhibits 2 through 6 inclusive, were received into evidence)

MR. LARACY: I am going to mark this Petitioner's Exhibit 7.

(The document above-referred to, was marked Petitioner's Exhibit No. 7 for identification)

Q. (By Mr. Laracy) Mr. Miranda, would you identify this [147] agreement?

A. That's Local 317 in Texas. It is their contract.

MR. WINCH: Now, if the Hearing Officer please, I object to any evidence concerning a contract between the helicopter company in Texas as being utterly irrelevant to this proceeding. He might go on to Ford Motor Company and many other companies. We are talking about the situation of the managerial buyers or the buyers as managerial employees in this plant.

We have given the facts affecting them in this company. And the facts—yes, Helicopter is an autonomous company. They operate separately. There is no connection. If there ever comes a time when there is a contract between the Bell Helicopter Company Division and this company, the Employer who is in this proceeding, it is on a competitive basis. They operate as entirely separate and autonomous companies under different managements entirely. The conditions are entirely different. There is no relevance between what's happening in Texas and what's happening in the Town of Wheatfield.

MR. LARACY: They are all a part of generally the same Textron Team. The UAW has a contract at both manufacturing areas. From what I can get out of here, this group up here, Bell Aerospace up here, manufactures parts for that company down there, for that division. [148] We negotiate with them.

What we propose to show is they have negotiated contracts with the UAW in which they have buyers included. I propose to introduce a write-up of buyers down there

to show they are similar to buyers up here. I think we have the right to get that on the record so the Regional Director will have that available for his information.

MR. WINCH: As a matter of fact, I want it to appear that this question has never been raised in Texas and the conditions are entirely different. Here it may be that Local 1286 should not be a union. It may be that they are managerial employees. We are not raising that as a question. But whether or not they are represented by the union, we have no objection to that. But what is happening in Texas and what happened in Texas has no relevancy here.

There was never any election in Texas. What was done there was done through some of the parties. Here we are taking a definite position the buyers in the Wheafield plant are managerial. Down in Texas I don't know what they are.

HEARING OFFICER: I am goinng to take a recess here for just a few moments. I want to check some things out before I rule on that objection. So, we will recess for maybe about—

MR. LARACY: I might add here, my memory might be [149] vague but if I remember there was a strike conducted here and in Texas at the same time. And when the agreement was reached, it was reached by both parties, the same people. The same international representative was in on both negotiations and there was a definite tie-up.

Whether the Company consented or not, these people were part of the unit. For whatever reason I don't know. Was there a consent election or just a consent?

MR. WINCH: There was a consent election.

HEARING OFFICER: There was a consent election in Texas?

MR. WINCH: Yes:

HEARING OFFICER: Let me take this opportunity to check on some facts here. We will adjourn for about five minutes.

(Short recess taken)

With respect to Mr. Winch's objection, I am going to allow this testimony. If it is irrelevant of course or if it

does not relate to the matter at hand the decision writer and Regional Director can make the decision at that time. In the interest of trying to develop a thorough and complete record I am going to allow this testimony. Again you have an automatic exception.

MR. WINCH: In this instance, if the Hearing Officer please, I consider this so important that I would like to develop the facts a little more fully. I would like [150] to swear Mr. Wacks, the Vice-President of the company to establish there is no connection between the two companies.

I assume you have talked with the Regional Director or some other officer of the Regional Board. I would like to have them present to hear Mr. Wack's testimony because I think your decision is wrong. I want to have the facts fully before you because I think maybe we can satisfy you that you should make the contrary decision. May I put Mr. Wacks on?

HEARING OFFICER: Mr. Winch, you will have every opportunity to recall Mr. Wacks to establish the points that you have indicated through his sworn testimony.

Again, you will be able to, you know, you'll be afforded every opportunity to present your side fully and completely. However, I will not permit you to at this time call Mr. Wacks.

I will also let the Regional Director make the decision as to whether or not this testimony is germane when he reviews the record.

MR. WINCH: Of course it is a cardinal rule of evidence before this Board or before the Courts that evidence should be considered only if it is relevant.

HEARING OFFICER: I am aware of that, Mr. Winch. I know you are also aware of the fact this is a non-adversary [151] proceeding where we try to follow the rules of evidence as closely as possible. We do not follow them as strictly as we would in a Court of Law.

MR. WINCH: That remains only for me to review my objection and take the automatic exception to it.

HEARING OFFICER: Okay, fine.

Mr. Laracy, you may proceed.

Q. (By Mr. Laracy) Mr. Miranda, would you just identify that agreement I just handed you?

A. This agreement is the agreement between Local 317 UAW down in Texas.

HEARING OFFICER: Has that been marked for identification?

MR. LARACY: At this time I would like to mark that and introduce it in evidence as Petitioner's Exhibit No. 7.

(The document above-referred to, was marked Petitioner's Exhibit No. 7 for identification)

Q. (By Mr. Laracy) Who comprises that unit, Mr. Miranda?

A. It is made up of many classifications, among which are inspectors, illustrators, accountants, cost analysts, quality control sort of people.

Q. Would you say that is an office clerical and technical unit?

A. I would say it is a combination of that, yes.

[152] Q. Are buyers included in that agreement?

A. Yes, sir.

Q. Would you point out the page number?

A. On page 79 of this agreement the buyers are so listed.

Q. Could you give us the official title of buyers?

A. Well, the official title seems to be just plain "Buyers".

Q. Is there another title?

A. There is "Assistant Buyer."

Q. So, there is Buyer and Assistant Buyer?

A. Evidently by this contract there is, yes.

HEARING OFFICER: Do you know how many buyers are in that unit?

THE WITNESS: No, I do not, sir.

Q. (By Mr. Laracy) Mr. Miranda, would you identify this job specification for us?

A. This job specification is the Buyer Classification that was supplied to me by President Lloyd Cox of Texas Local 317.

MR. LARACY: This will be Petitioner's Exhibit No. 8.

(The document above-referred to, was marked Petitioner's Exhibit No. 8 for identification)

Q. (By Mr. Laracy) is that a job description for buyers?

A. Yes, it is, sir.

[153] Q. Is it similar to the job occupation or job write-up we have for the buyers up here at Bell Aerospace in Buffalo?

MR. WINCH: I object on the grounds it is calling for a conclusion.

THE WITNESS: I would say it is almost identical.

MR. WINCH: It calls for a conclusion. The paper will speak for itself.

HEARING OFFICER: Sustained. The document speaks for itself.

MR. LARACY: We would like at this time to introduce Petitioner's Exhibit 8.

MR. WINCH: Objection. It is entirely irrelevant.

HEARING OFFICER: I will overrule the objection and receive Petitioner's Exhibit 8 into evidence.

(The document above-referred to, heretofore marked Petitioner's Exhibit No. 8, was received into evidence)

MR. SCHMIT: Would you identify that, Mr. Hearing Officer?

HEARING OFFICER: Petitioner's Exhibit No. 8, is entitled "Job Specification for the Job Title Buyer, Job Code 063, Labor Grade A13, Dated 2-20-56."

MR. WINCH: I do not want Mr. Laracy to overlook anything. He has not offered Exhibit No. 7 into evidence yet.

[154] MR. LARACY: Thank you. I would like at this time to introduce Petitioner's Exhibits 7 and 8 into evidence.

MR. WINCH: I object to both exhibits as being irrelevant.

HEARING OFFICER: I believe Employer's Exhibit 8 has already been admitted into evidence. I will over-

rule your objection and receive Petitioner's Exhibits—Petitioner's Exhibit No. 7.

(The document above-referred to, heretofore marked Petitioner's Exhibit No. 7, was received into evidence)

MR. LARACY: I will mark this Petitioner's Exhibit No. 9 for identification.

(The document above-referred to was marked Petitioner's Exhibit No. 9 for identification)

Q. (By Mr. Laracy) Mr. Miranda, would you identify this piece of paper for us please?

A. These are the labor grades and rate ranges as supplied by President Lloyd Cox in Texas of the jobs that they cover by this agreement.

Q. Under the Job Classification Buyer—Job Specification Buyer, for Local 317, they have it marked as Labor Grade A 13?

A. That's right.

Q. Would you give us the dollar per week range?

[155] A. A 13 wage range in dollars per week go from $203.20 to $272.60.

HEARING OFFICER: May I see that?

THE WITNESS: Yes.

HEARING OFFICER: You are offering this as Petitioner's Exhibit No. 9?

MR. LARACY: Yes. At this time I would like to offer it as Petitioner's Exhibit No. 9.

MR. WINCH: I object again on the grounds it's entirely irrelevant.

HEARING OFFICER: Your objection is overruled and Petitioner's Exhibit No. 9 is admitted into evidence.

(The document above-referred to, heretofore marked Petitioner's Exhibit No. 9, was received into evidence)

Q. (By Mr. Laracy) Mr. Miranda, what is your job title at Bell Aerospace?

A. I am a Class 3 Tool Designer.

Q. What is your official title? Class 3 Tool Designer?

A. I believe so.

Q. Do you have any contact with the buyers?

A. Yes, I do.

Q. Could you describe those contacts?

A. Well, I would have to say I do through the people that I represent. Personally, I haven't had personal contact with the buyers as such since I was over at the [156] Kenmore facilities some ten years ago where personally I had some occasion to work with—there was a Joe Bathy I believe at that time and there were—I'll be darn, if I can think of his last name. But he still works there as a buyer. I had occasion to work with these two people on an outside design vendor type program.

Personally, lately, I have not had occasion to work with them. But I do know our people are working with them.

Q. What is the name of your department?

A. Tool Design Department.

Q. What is the function of that department?

A. Basically it is to design all specialized tooling that is not the off-the-shelf type of item, such as drill jig fixtures, saw fixtures, anything that is necessary in the fabrication or in the manufacturing sections of the company.

Q. Are these manufactured in the plant or purchased?

A. Some are manufactured in the plant. Others are made for us by outside tool designers. None of the tooling we design is available to be purchased off the shelf.

Q. Does your department initiate these requisitions when it has to be purchased from vendors?

A. Yes. In the case of Tool Design, if we find there is an overload of work and the people in the department [157] cannot meet the schedule put on the master schedule by the planner our group leader and supervisor get together and maybe decide they are going to send a half dozen jobs to be designed to outside vendors.

They decide who is going to do the work on these designs.

The buyer is contacted through tool control, which is a clerical department. The tool control department makes ready the purchase requisitions. A buyer is contacted and asked to call in the vendor that is the choice of tool design. The buyer arranges for that meeting.

The buyer comes into the plant usually and goes over the job to be designed with the tool designer who is in charge of that particular function. The tool designer has

already prepared the package so to speak with the engineering prints that are involved, the operation sheet, and all necessary data that would help or make it possible for this vendor to design the tool.

Tool design estimates the amount of design hours necessary that will be allowed to this vendor so that we know if we are getting a fair price on this thing. That list of estimates is given naturally to the buyer so that he would know when the vendor submits a bid whether it is within the realm of reasonableness of not.

HEARING OFFICER: You said that it is your department [158] that decides what vendor will be called in?

THE WITNESS: Yes.

HEARING OFFICER: Does the tool designer decide this or Tool Design?

THE WITNESS: It is a combination of Tool design and the supervisor.

HEARING OFFICER: How does that work?

THE WITNESS: On some occasions we as tool designers have been asked to visit the facility of this particular vendor to see if in our opinion he has people enough, boards enough, and capabilities enough to do the type of work that is required.

HEARING OFFICER: By "boards" you mean drafting boards?

THE WITNESS: Yes.

HEARING OFFICER: And then after you have visited the vendor on one of these occasions would you then report back to your supervisor?

THE WITNESS: Yes. We report back to the supervisor and give our opinion as to the capabilities at least on the surface. And then of course we add this to the list of desirable vendors.

HEARING OFFICER: Who makes the ultimate decision?

THE WITNESS: I would say our supervisor probably does.

HEARING OFFICER: Mr. Laracy.

[159] Q. (By Mr. Laracy) When the vendor comes in who does he have the meeting with, you and the buyer or just the tool designer?

A. Well, the buyer is there on occasions, although his being there—I hate to minimize the importance of the buyer, but in reality he actually does nothing but arrange for the meeting. All the conversation is with the tool designer or group leader of tool design, which is the same classification. The buyer if he is there, and on the occasions where I personally had to take care of this outside vendor stuff, and buyer absolutely did nothing but sit and wait until we were through.

MR. WINCH: I object to that answer and ask it be stricken. This witness testified he has not seen a buyer for ten years. Now he's talking about ten years ago when he saw buyers sitting down and doing nothing. We are talking about what is happening at the plant today in 1970, 1969 and 1970. That is too remote.

MR. LARACY: I would like to say this. Mr. Miranda is President of the local. He is Chairman of the negotiating team. When he negotiates he has to negotiate for each individual. He has to know their job classification and what their duties are. Even though he is not doing it, I am sure if the person sitting next to him has dealings with a vendor I am sure he is aware of it. I am sure all [160] the information is presented to him. I do not see how he could effectively negotiate without this knowledge.

HEARING OFFICER: Is it true the last time you met with a buyer and vendor was about ten years ago?

THE WITNESS: Yes, it is true.

HEARING OFFICER: I will allow his reply. I think the record is clear that it has been ten years since he has personally been in on one of these meetings.

MR. WINCH: I do not have to repeat each time that I except to the ruling. That is automatic as you have stated. So, when you make your rulings my exception is automatic.

HEARING OFFICER: Right.

Q. (By Mr. Laracy) When the record is finally processed, Mr. Miranda, the specifications, the vendor, and most other vital information is on the record?

A. All vital information is supplied to the vendor directly by the tool designer. In other words the buyer—

and I know this to be true. While I personally have not done it I as late as yesterday talked to the three people that are doing it and have been doing it. Their names are Albert Cavallari, Paul O'Brien, and Fred Tucholski. Those are the people doing it and they have done it right up to a couple of months ago. At this time we don't have any work going outside.

[161] MR. WINCH: Again I object on the grounds it is hearsay.

THE WITNESS: All personal data—

HEARING OFFICER: Excuse me. There has been an objection. I am going to overrule that on the basis that if this is hearsay I think it will be clear on the record and the Regional Director and the decision writer can accept the testimony for what it is worth.

Q. (By Mr. Laracy) Then actually, Mr. Miranda, with the—when the buyer gets the requisition he just formalizes it by putting it into purchase order form; is that right?

A. That's right.

Q. Are you familiar with the job description of engineer—

MR. WINCH: I object to that last answer and ask it be stricken on the grounds he does not know.

THE WITNESS: I do know. I know what a purchase order is and purchase records. For you to sit there and say I don't know is—

HEARING OFFICER: Just a moment. It is not your place to be arguing with counsel. Mr. Winch has every right to object to whatever he feels like it.

I will overrule that objection also, sir, on the same basis as your last objection.

I also wanted to ask a question here. I want to establish this point. The specifications and so forth that are prepared by the tool designer, is this done through [162] the supervisor?

THE WITNESS: I would say no. The supervisor actually at this point has very little to do with the actual contacts of the tool designer and the vendor. He might decide, like I said before, sir, that we are going to send these jobs outside. Once that decision is made he charges

the appropriate tool designer with the job of doing all the work necessary to make possible the vendor's operation. At that point the supervisor has little or nothing to do with it until the final design comes in, or there may be questions on the type of approach, which is normally his guiding light, anyway. If we are stuck, he would guide us. As a rule there is very little supervision done other than supervision done by the tool designer to the vendor.

HEARING OFFICER: Off the record.

(Discussion off the record)

HEARING OFFICER: Back on the record.

Mr. Laracy, at this point, as we discussed off-the-record, I am going to ask you to explain your purpose in pursuing this line of questioning with this witness.

MR. LARACY: The company in their testimony attempted to prove that the buyers make all the decisions in issuing a purchase order. They claimed the buyer makes the decision who the vendors are, what type of material to buy, what type of tool to buy, what type of equipment, and so forth.

[163] It is our desire in this testimony to prove that most of these decisions in the big money values are made by other people other than buyers, such as tool designers, material control employees, machinery and equipment planners. These are the ones that make the decisions as to what kind of tools, where to buy the tools. They are the ones who talk to the vendors. Eventually the buyer just formalizes the paperwork.

HEARING OFFICER: Would you proceed.

Q. (By Mr. Laracy) Mr. Miranda, are you familiar with Engineer, machine and equipment planning?

A. Yes, sir, I am. They happen to be in our Production Engineering Technical Association unit.

MR. LARACY: I will mark this Petitioner's Exhibit 10.

(The document above-referred to, was marked Petitioner's Exhibit No. 10 for identification)

Q. (By Mr. Laracy) Would you identify the job description for us please?

A. This is our job description of Engineer, Machine and Equipment Planning, Class 2.

MR. LARACY: I would like to introduce it into evidence at this time, Petitioner's Exhibit No. 10.

MR. WINCH: No objection.

HEARING OFFICER: Petitioner's Exhibit No. 10 is received into evidence as there are no objections.

[164] (The document above-referred to, heretofore marked Petitioner's Exhibit No. 10, was received into evidence)

Q. (By Mr. Laracy) Now, Mr. Miranda, either from your firsthand knowledge or from the job write-up in front of you, could you tell us the Engineer, Machine and Equipment Planner, what is his function is?

A. Well, his function basically is complex in nature in that this particular man is groping for equipment and machinery that is rather exotic, that is, nothing that can be purchased that he knows of. Sometimes they have purchased machines that need modifications to take care of the particular needs of our company. So, our machinery and equipment planning engineer does all of the investigations after he knows what is necessary and required by our company. He does a lot of investigating.

He arranges, there again through the buyer, for an audience with the appropriate vendors that we think are available to perform and deliver the kind of machinery and equipment that the company is looking for. Ultimately when he decides he has found a place that will supply and can supply and deliver what we want, then he prepares a purchase requisition. And in the purchase requisition, it is pretty detailed, telling everybody including the buyer and the vendor exactly what is required, those specifi- [165] cations that must be met, and all of the intricacies and necessary items to be communicated.

There again the purchase requisition ultimately does down to purchasing and the buyer in the cases that I am familiar with, especially in the follow-up of machinery and equipment, the buyer produced a purchase order which is identical to the purchase requisition that

is prepared by our people, there again showing that the buyer had in this instance little or no latitude as far as I can determine in where they buy, who they buy from, or what goes into the making of the machinery and equipment. The purchase order is identical to the purchase requisition.

Q. Are there any vendor contacts here between the machinery and equipment planner?

A. Many, many contacts with the vendor. They might, however—

Q. Does the machine and equipment planner ever visit the vendor on the road?

A. Occasionally they do.

Q. What percentage of this time is spent doing that?

A. I am not in a real position to judge that. I wouldn't hazard a guess, really. Just on occasions. I wouldn't know what percentage our people are asked to go to the vendor.

[166] HEARING OFFICER: Would they visit the vendor alone or with a management team?

THE WITNESS: They could be in either. Many times this equipment engineer goes alone or in some instances he goes with a manufacturing engineer to match notes because our equipment naturally comes from other parts of the corporation. We as such do not determine the kind of equipment necessary. The requirements that come to us are from other sources such as manufacturing engineering and such as that because they know that the company is getting into a new and strange field. Somebody else actually determines the kind of work we are going to be doing, and our manufacturing engineer looks around for the specialized equipment that can possibly produce that kind of stuff.

HEARING OFFICER: You indicated before, correct me if I'm wrong, purchase orders are the same thing as purchase requisitions?

THE WITNESS: I am saying they are identical.

HEARING OFFICER: Do you see the purchase orders?

THE WITNESS: I do see them and I have seen them, especially since we are working on this particular

thing. I have taken the time to go through the files and get copies of our purchase requisitions and the related purchase orders to show they are identical.

MR. WINCH: If the Hearing Officer please, I take it [167] from the testimony, and I say this to help clarify the record, that there are two documents. There is the requisition and the purchase order. I do not think the witness intends to deny that.

HEARING OFFICER: Well, let me ask you, you are aware there is a purchase requisition and a purchase order?

THE WITNESS: In this particular case, there are two pieces of paper. One is a purchase requisition and one is a purchase order. There are other occasions where there are not two pieces of paper; there is one piece of paper that is filled out and signed by the tool expeditor. I have copies that show that.

MR. WINCH: If the Hearing Officer please, I think the witness has contradicted himself.

HEARING OFFICER: You will have an opportunity to develop that on cross-examination.

Q. (By Mr. Laracy) In the job description you were reading, you underlined certain material. Would you describe why you underlined that material?

A. I underlined it again because we are talking about the latitude of the buyer relative to the latitude we have. This shows it is a contractual agreement with the company. That job description that I am looking at includes that it is our obligation to prepare the purchase requisition for capital, portable and departmental equipment for approval [168] of the supervisor. And further down I underlined we coordinate the efforts of other BAC and outside personnel relative to procurement, delivery and installation of equipment.

HEARING OFFICER: What is "BAC"?

THE WITNESS: Bell Aircraft.

MR. WACKS: Aerospace.

THE WITNESS: It was Aircraft at that time and we never changed it.

It is a contract obligation of our people to the company to do the work that is underlined here. When we do

it the latitude of the buyer as such in these particular cases is very, very minimum because he does nothing to change the purchase order. He has nothing to do with the vendor other than to arrange for the meeting with the vendor and the people we have involved. So, that is what this shows as far as I can see.

HEARING OFFICER: Excuse me. Before we leave this document, it says "Received 8-30-67, Rejected." What does that mean?

THE WITNESS: This was my note. Actually this was a new job description, not this last contract negotiation but the one prior to that in 1967. We agreed on some new duties and a new price for this job. The company prepared [169] these job descriptions. Of course we have to agree to them. And I have to admit that while the company wrote this there is some intricacies of this particular job that we never actually agreed with. So, I made a note. I sent the company a notice of rejection.

HEARING OFFICER: Is this the current existing valid job description at this time?

THE WITNESS: Yes, it is the only one that is in existence.

MR. LARACY: Mr. Hearing Officer, this will be our next exhibit. This will be P 11.

(The document above-referred to, was marked Petitioner's Exhibit No. 11 for identification)

Q. (By Mr. Laracy) Mr. Miranda, would you identify this?

A. This is the Departmental Job Instruction including the machinery and equipment control functions at the corporation. Under Paragraph II B, are the particular duties as sought by the company of our manufacturing and equipment engineering. Again I read from Paragraph II B of this departmental job instruction No. M 9-001. Under the heading of Manufacturing Equipment Engineering I have underlined the same things that were written by the company that appear in our job description. They read: "Evaluate and prepare purchase requisitions for approved machinery and equip-

ment MER's and sales orders (facility contracts)." [170] And sub paragraph 3 of B it is "Coordinate efforts of Plant Layout, Plant Engineering, Procurement, Manufacturing, Maintenance, Outside Contractors and Vendors relative to procurement delivery and installation of equipment."

HEARING OFFICER: Let me caution the witness or advise the witness it would be best if he would try to confine his answers a little more to be responsive to the questions asked. For example, I think you gave us a great deal of information from that document.

Q. (By Mr. Laracy) What is the purpose of this document, Mr. Miranda?

A. The purpose, as I understand, these departmental job instructions are written by the supervisors that control these functions as to what they expect of certain jobs and the relationship of one job to another within the corporation. This is kind of a flow of related skills and inputs you might say.

Q. Would you say it describes the functions of the department and the employees who work in those departments?

A. I would say it does.

MR. LARACY: At this time I would like to introduce Petitioner's Exhibit No. 11, which is the departmental job instructions.

HEARING OFFICER: Has this been marked for identification?

MR. LARACY: Yes.

[171] MR. WINCH: Again I have no objection as to the authenticity of the exhibit, but my objection has to do with the relevancy of the testimony and to this whole line. I am familiar with the rules of the Board, and I do not want to keep interrupting. But my objection to the whole line of questioning continues on the grounds of non-relevancy.

HEARING OFFICER: Well, it is my understanding that Mr. Laracy contends this testimony is going to show that the buyers do not have complete autonomy in the selection of vendors and are not as autonomous as the company says they are. This is his intention of course.

On that basis I will allow this line of questioning and overrule your objection.

Off the record.

(Discussion off the record)

HEARING OFFICER: Back on the record.

Petitioner's Exhibit No. 11 is received into evidence, notwithstanding Mr. Winch's objection.

(The document above-referred to heretofore marked Petitioner's Exhibit No. 11, was received into evidence)

Q. (By Mr. Laracy) Petitioner's Exhibit No. 11, Mr. Miranda, describes the responsibilities and duties of machinery and equipment control?

A. Yes, it does.

MR. LARACY: This will be Petitioner's Exhibit 12.

[172] (The document above-referred to was marked Petitioner's Exhibit No. 12 for identification)

Q. (By Mr. Laracy) Mr. Miranda, would you identify this?

HEARING OFFICER: Excuse me. Off the record.

(Discussion off the record)

HEARING OFFICER: Back on the record.

Q. (By Mr. Laracy) Mr. Miranda, would you describe what that piece of paperwork is, please?

A. This is a copy of a purchase requisition that was prepared by one of the people in our union G.J. Metz. It describes a modified electron beam welder and all of the technical details that go into the ordering of this equipment. There are several pages of technical data here that I am not intimately familiar with in that respect. But that's what it is. It is a purchase requisition made by one of our manufacturing engineering planners.

HEARING OFFICER: Let the record show he is referring to Petitioner's Exhibit 12.

MR. LARACY: At this time the Petitioner would like to introduce Petitioner's Exhibit No. 12 into evidence.

HEARING OFFICER: Any objection?

MR. WINCH: Same objection on the grounds of nonrelevance.

[173] HEARING OFFICER: Objection overruled. Petioner's Exhibit No. 12 is received into evidence.

(The document above-referred to, heretofore marked Petitioner's Exhibit No. 12 was received into evidence)

Q. (By Mr. Laracy) Mr. Miranda, could you describe how this requisition originates, who types it and so forth?

A. It originates after our manufacturing—

HEARING OFFICER: Excuse me again. Mr. Laracy, I think we established that members of the Amalgamated Local prepares requisitions. Is there anything additional?

MR. LARACY: I am willing to drop it. I want to make sure it is clear this information is put on by this department and the buyer just follows their instructions. The company made a big issue that the buyers do all of this work. We want to make it clear it is done outside of that department.

HEARING OFFICER: Okay, continue.

MR. LARACY: At this time I would like to introduce Petitioner's Exhibit No. 13 which will be a purchase order, which is tied into Petitioner's Exhibit No. 12.

(The document above-referred to, was marked Petitioner's Exhibit No. 13 for identification)

Q. (By Mr. Laracy) This is the exact purchase order for the requisition that we introduced as P 12. It is [174] obvious the wording and everything is exactly the same. Would you identify this?

HEARING OFFICER: That is Petitioner's Exhibit No. 13?

MR. LARACY: Yes.

THE WITNESS: This is a copy here again of a purchase order which takes cares of our purchase requisition 024091. In a comparison of the two I find the purchase order is identical in content to the purchase requisition.

Q. (By Mr. Laracy) Is Petitioner's Exhibit 13 the actual purchase requisition for requisition P 12?

A. This is a copy of it actually, P 12. It is a copy and not the actual requisition or purchase order I should say.

HEARING OFFICER: Would this beam welder designed by one of your tool designers?

THE WITNESS: No, sir. This is special equipment designed by people who specialize in special equipment. In this case we did not design this.

HEARING OFFICER: I guess I was premature in interrupting Mr. Laracy's line of questioning with respect to Petitioner's Exhibit 13. Let's take a minute to look at it.

When you say that the purchase orders are identical, are you referring to the single item there which says "Modified Electron Beam Welder?"

THE WITNESS: Not only that, but if you read it or compare the writing of the purchase requisition with the [175] writing of the purchase order, the verbiage on the purchase order is identical to that on the purchase requisition.

The prices I realize are different, but the total comes out the same. The prices we have there, again that might be the obligation of the buyer. We do have prices on our purchase requisitions which were given to us, maybe initially by the vendor. Possibly there was a change or miscalculation in the estimate. I realize they are not identical to the extent our prices shown on the purchase requisition are not identical with the prices shown on the purchase order. I found that by totalling it all up it comes out to about $120,000. It seems to be the same.

HEARING OFFICER: All right.

MR. LARACY: Have I introduced that?

HEARING OFFICER: I don't believe so.

MR. LARACY: At this time I would like to introduce Petitioner's Exhibit 13 into evidence.

HEARING OFFICER: 12 and 13?

MR. LARACY: No. 13.

MR. WINCH: No objection.

HEARING OFFICER: Then that's received into evidence.

(The document above-referred to, heretofore marked Petitioner's Exhibit No. 13 was received into evidence)

MR. LARACY: This will be Petitioner's Exhibit No. 14.

[176] (The document above-referred to was marked Petitioner's Exhibit No. 14 for identification)

Q. (By Mr. Laracy) Mr. Miranda, would you describe this piece of paperwork?

A. This is a copy of the kind of work our tool expeditor does, namely Bill Grass. This is a purchase requisition prepared by Mr. Grass telling what we need, suggesting some place that we might buy it, and this ultimately—evidently it was originally a purchase requisition prepared by our people. But it wound up to be the purchase order by a buyer's signing it down here and putting a purchase order number on it. So, this is the occasion I referred to when there are not two separate pieces of paper. This is a combination purchase requisition that becomes a purchase order. This is an example.

Q. This is issued by who?

A. Our tool expeditor.

MR. LARACY: I would like to introduce Petitioner's Exhibit No. 14 into evidence.

HEARING OFFICER: I am just a little puzzled. This is a many page document. Are you referring to Page 1?

MR. LARACY: This is actually four different requisitions and four different purchase orders. It is an example of the type of requisitions that is issued by the tool expeditors and eventually becomes the purchase order.

[177] HEARING OFFICER: You are introducing this four page document?

MR. LARACY: That's right.

THE WITNESS: They are all separate. I was looking at the one on top. The one on top is different than the one on the bottom.

HEARING OFFICER: Does the same thing hold true for Employer's Exhibit No. 12? It is a multi-page document. That's all one purchase requisition?

THE WITNESS: Yes, all one.

HEARING OFFICER: And Petitioner's Exhibit 13 is all one, one purchase order?

THE WITNESS: Right.

HEARING OFFICER: But 14 is four separate purchase requisitions?

THE WITNESS: That resulted in purchase orders, yes.

HEARING OFFICER: You offered these into evidence, Mr. Laracy?

MR. LARACY: Yes.

HEARING OFFICER: Mr. Winch, do you have any objection?

MR. WINCH: No objection.

HEARING OFFICER: All right. Petitioner's Exhibit 14 is received into evidence.

(The document above-referred to, heretofore marked Petitioner's Exhibit 14, was received into evidence)

[178] Q. (By Mr. Laracy) Here too, Mr. Miranda, the vendor is determined by the tooling department?

A. Yes. We have the name of the vendor and the name of the distributor.

Q. Mr. Miranda, in reference to your fringe benefits that your people enjoy, do all the members of Local 1286 have the same fringe benefits?

A. Yes, they do.

Q. What is your vacation schedule? How about vacations?

A. The vacation schedule, after ten years you get three weeks, after fifteen you get four weeks vacation, and after twenty-five years you get five weeks vacation.

Q. That's what, twenty-five years, five weeks?

A. After twenty-five years you get five weeks, yes.

Q. How about the hospitalization and medical plan?

A. We are covered by Prudential. We have salary continuation. It's all uniform as far as I understand.

MR. WINCH: Now, this I object to. This is directed toward community of interest.

HEARING OFFICER: Is that the purpose?

MR. LARACY: The purpose is to show members of 1286 receive the same fringe benefits as do the buyers and assistant buyers in other words.

HEARING OFFICER: I am going to admit that. I am overruling your objection, Mr. Winch, for this reason, that frequently when determining whether or not employees are [179] managerial or not managerial we look also to the, for example, difference in pay or the difference in fringe benefits or other factors such as this in helping us to make such determination. On that basis I feel the testimony is relevant and I will overrule the objection.

Q. (By Mr. Laracy) You have a Prudential Insurance policy for your hospitalization and medical plan?

A. Yes, sir.

Q. This is a complete coverage plan?

A. It is with the attachment of salary continuation or long-term disability.

Q. What do you mean "salary continuation"?

A. If I go to the hospital and have to be operated on, while convalescing I am paid my full salary for a given number of weeks and then half-salary for another given number of weeks. After those benefits run out I get what they call "long-term disability", which is another amount.

Q. Do you contribute toward this plan?

A. Yes, we do. It is a monthly basis contribution based on the amount of money you are making.

Q. Based on your pay?

A. Yes.

Q. What type of pension plan do you have?

[180] A. The same pension plan all salaried people in the corporation are given. There again your contributions are based on the amount of money you are earning and the benefits are paid accordingly.

Q. It is based on salary?

A. Yes, sir.

Q. It is a contributory plan?

A. It is contributory, yes.

Q. Was there a scale set up for contributions?

A. Yes, sir, there is.

Q. Do you have sick days?

A. Yes, sir, we do.

Q. How many?

A. There again it depends on length of service ranging from ten days to twenty days.

Q. Ten days and twenty days?

A. Yes.

Q. For what length of service do you receive ten days?

A. Anything up to five years you receive ten days sick leave. Over five years you receive twenty days sick leave.

Q. Do you have a stock option plan?

A. Yes, sir.

Q. Will you describe that?

A. It enables the employee to buy 10% of his gross pay in stock where the company also contributes half of the [181] amount you buy. The company puts in a dollar for each dollar's worth that you buy.

HEARING OFFICER: May we go off the record for a minute?

(Discussion off the record)

HEARING OFFICER: Back on the record.

Q. (By Mr. Laracy) How does the company contribute to this stock option?

A. Half of what the employees contribute. For every dollar of the employee's the corporation pays half.

Q. What are your overtime provisions?

A. We get time and a half for all hours worked in excess of eight daily. We get time and a half for all hours worked on Saturday. Whether they be over forty hours or not, is not related. We get double time on Sunday.

Q. Holidays, how many holidays?

A. Ten holidays.

Q. Group life insurance?

A. There again it's all to the amount of—well, it's related to the amount of money you're making.

Q. Is this included in the basic Prudential plan?

A. Group insurance is basic in the Prudential plan.

Q. It covers hospitalization, life insurance, and salary contribution? It's one policy?

[182] A. Yes. We do have other life insurance attached to the pension plan. There are two separate life

insurance plans that are identical. This again is for all salaried people.

Q. Are there any other fringe benefits that you can think of that I did not mention?

A. No, sir, I cannot think of any right off.

MR. LARACY: I have just one more exhibit to enter and I will be finished. This will be Petitioner's Exhibit No. 14.

HEARING OFFICER: 15, I believe.

MR. LARCY: 15, I'm sorry.

(The document above-referred to, was marked Petitioner's Exhibit No. 15 for identification)

Q. (By Mr. Laracy) Could you identify that, please?

A. This is a copy of our Local 1286 classification and rate ranges as prepared and supplied by the company. This contains all of the classifications that make up all of the units of Local 1286 Amalgamated.

MR. LARACY: I should have introduced this earlier just to give us a complete picture of Local 1286's establishment. Iwould like to introduce Petitioner's Exhibit No. 15 into the record.

HEARING OFFICER: As evidence?

Mr. Laracy, you are introducing this in evidence?

[183] MR. WINCH: No objection as to the authenticity but as to relevancy, yes.

HEARING OFFICER: I will overrule the objection and Petitioner's Exhibit No. 15 is received.

(The document above-referred to, heretofore marked Petitioner's Exhibit No. 15, was received into evidence)

Q. (By Mr. Laracy) What other labor unions are established at Bell Aerospace here in the Buffalo area?

A. We have Local 516 which is made up of inspectors, timekeepers, and data processing girls in accounting. Then we have Local 501 which is—

Q. Are timekeepers included?

A. Timekeepers are included in Local 516.

MR. WINCH: Again I object to the relevancy of other unions in the Buffalo area at Bell.

MR. LARACY: I think the Regional Director or decision writer should have a clear picture as to what the collective bargaining history and collective bargaining set up is out at Bell. For example, here is a unit that has obviously clerical people, inspectors, who work out in the shop and they have plant clerks who are timekeepers.

MR. WINCH: Are you contending these other unions are managerial?

MR. LARACY: No. I just want the Regional Director [184] and decision writer to have the complete history of the—the bargaining history out at Bell. I think this is essential.

I can see no objection to the Regional Director knowing what the collective bargaining history is and the collective bargaining status is as of now out at Bell.

HEARING OFFICER: I am not sure I understand what you mean by "collective bargaining history". Do you mean to indicate to what other units there are covered by contract?

MR. LARACY: Well, we have a Local 516 which has accounting people in it which are classified as office clerical. We have inspection which is PM and we have timekeepers which are usually plant clerical in the one unit, which is odd. I am not objecting to it. I think it should be on the record.

HEARING OFFICER: Do you think you can handle it with just a statement on the part of the union's President? I am not altogether clear that I see that the—I am not altogether clear that I see the relevance of this either. I see no harm if you just enter it into the record. I see no objection.

MR. WINCH: We concede we have bargaining relationships with a number of unions, but not with any managerial employees, unless as sometimes appears from this witness' testimony his union is managerial. Maybe we should not have a contract [185] with them. But with the other unions, we agree they are entitled to representation under the Act.

MR. LARACY: I want it on the record we have other UAW units there, and I want the unit clarified.

HEARING OFFICER: Off the record.

(Discussion off the record)

HEARING OFFICER: On the record.

Based on an off-the-record discussion, I will overrule Mr. Winch's objection and permit you to introduce some evidence concerning unions at Bell Aerospace.

Q. (By Mr. Laracy) Could you describe each local and their unit composition?

A. To the best of my knowledge there is a local 516 which comprises the inspectors, timekeepers, and the data processing girls in accounting. We at one time in the PETA Production Engineering Technical Association, as a matter of fact including Loft and Production Control, were in this particular union, 516. We are not any longer. There was a separation of 516 because they were hourly people and we chose to form and did in fact form a salaried separate group there. So, all people in our group are salaried and all people in 516 are hourly.

There is Local 501 which is made up of all production and maintenance employees. I am not able to give you all the classifications but they range from sweeper to the [186] tool manager. There is a lithographer's union, there is another union, a guard's union, there is a local 205 AFTE, I guess, American Federation of Technical Engineers. This is a technical organization. Aside from that I don't know of anymore.

MR. LARACY: That's all I have.

HEARING OFFICER: Mr. Winch, I assume that you have questions that you want to ask also of this witness on cross-examination, but seeing it's almost lunch time, maybe this might be a good time to break for lunch.

MR. WINCH: That is satisfactory.

HEARING OFFICER: We will take our lunch break and we will be back here at 1:00 o'clock.

(Whereupon, at 11:45 a.m., the hearing in the above-entitled matter adjourned, to reconvene at 1:00 p.m. the same day)

[187] AFTERNOON SESSION

HEARING OFFICER PALERMO: On the record.

Mr. Miranda, would you resume the stand, please? Whereupon,

JOHN MIRANDA

resumed the stand and testified further as follows:

HEARING OFFICER: You are still under oath.

THE WITNESS: Yes, sir.

HEARING OFFICER: Mr. Laracy, am I correct you have completed your direct examination?

MR. LARACY: Yes, I have completed it.

HEARING OFFICER: Mr. Winch.

CROSS-EXAMINATION

Q. (By Mr. Winch) There is one ambiguity in my mind as to your testimony. At one point I understood you to say that everything that resulted in a purchase passed through the purchasing department and was signed by somebody in the purchasing department, and then at another time I understood you to say that there were some instances where the purchasing department was entirely short circuited, nobody from purchasing signed it, the purchase order went directly from 1286 to the vendor. Which is correct?

A. I don't believe you quoted me exactly correctly, sir.

Q. I want to be corrected. I want to make it clear for the record.

A. I never did say, to my recollection, that the [188] purchase requisitions never passed through the purchasing department as such. What I did say was there were not always two pieces of paper. There was not always a purchase requisition and an additional purchase order.

I tried to point out in some instances, the purchase requisition that we created resulted in purchase orders and there was not an additional piece of paper. The purchase requisitions became purchase orders by passing through the procurement department and being signed. That is what I meant to say.

Q. Somebody from the purchasing department does sign every requisition before the order is actually placed?

A. That is true.

MR. WINCH: That's all.

CROSS-EXAMINATION

Q. (By Hearing Officer) Mr. Miranda, what is the number of your Amalgamated Union?

A. Local 1286.

Q. Do any members of Local 1286 to the best of your knowledge have the authority to commit the Employer's credit?

A. No, sir, we do not.

Q. Do any of these people themselves have the final say in determining with whom and when and order will be placed? In other words, actually making the decision and [189] saying, all right, Mr. X, you have our order?

A. It's hard to answer yes or no. I would say in most cases we do have the final say. But I suppose in reality the supervisor—

Q. Excuse me. I mean in your direct dealings with the vendor, does any member of Local 1286 in these departments we've discussed have the authority to go to a vendor and say, without prior authorization, you have got the deal and—

A. No, not without prior authorization. We would not have that authority.

Q. You do not directly place orders? By "you" I mean members of Local 1286.

A. No, we do not.

Q. The orders are placed through purchasing or procurement?

A. The answer would have to be yes to that. As I pointed out, we have a lot to say about who the order gets placed with and we have all to say in many cases with what gets done at the vendor.

Q. You mentioned before there are instances when a buyer will come in and talk to a tool designer with respect to purchasing a new tool. A purchase requisition that was creating by a tool designer, okay? Am I cor-

rect in that the buyer will come and talk to the tool designer?

A. That's true.

[190] Q. If the tool designer recommends let's say that a particular tool be ordered from Vendor A can the buyer if he feels it's advisable change the vendor and say I disagree with you?

A. I don't believe so because I am speaking—

Q. Do you know as a fact?

A. With reference to tool design where it comes to picking the vendors that are able to design our tools, the tool design department has the say as to who the tool vendor would be.

Q. Can you state that as a fact, sir?

A. I will state it as fact to the best of my knowledge.

Q. From your own knowledge?

A. Back ten years ago when I had direct contact with this sort of thing, when I was a group leader in tool design in charge of that sort of thing ten years ago, that was true. We decided who the vendor would be and we were the only ones qualified to know who the qualified vendors were. So that purchasing, while they had technical authority, never used it because they would have been behind the eight ball. They did not use that authority. It was not sensible, if they had it at all.

HEARING OFFICER: Do you have anything, Mr. Laracy? Any additional questions?

MR. LARACY: No, sir, that is all.

[191] HEARING OFFICER: You may step down.

(Witness excused)

MR. LARACY: I would like to call Mr. Harry White. Whereupon,

HARRY WHITE

was called as a witness by and on behalf of the Petitioner and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Laracy) Would you give us your name, please?

A. Harry White.

Q. Mr. White, could you give us your occupation?

A. Scheduler Production Material Control.

HEARING OFFICER: Excuse me, I didn't hear you.

THE WITNESS: Scheduler, Material Control.

HEARING OFFICER: I dont' believe he completed his answer.

THE WITNESS: That is part of the production material control unit, scheduler.

Q. (By Mr. Laracy) How long have you been employed with the company?

A. About nineteen years.

Q. Have you been a scheduler all this time?

A. Yes, sir.

Q. Are you an active member in your local union?

[192] A. Yes, sir.

Q. Could you give us your title and a brief history of your activities in the local?

A. I was steward first, then committeeman, and then President. I have been President twelve to fourteen years, and I am vice-president of the Amalgamated.

Q. Now, you are a member of the material control department. Is that the official name?

A. Actually the total name is production material control. It's all one, production material control.

Q. How long have you been a member of that department?

A. About nineteen years.

Q. Could you describe the functions of that department in its relation to the purchasing department?

A. Yes. We have two sections that are involved with purchasing. We do all the ordering for all raw materials. This is irrespective of production or research and development. We order all raw materials, all AM and NS's and standard part numbers.

HEARING OFFICER: What are AM's?

THE WITNESS: That's like nuts and bolts. AM and

NS's and any S's, standard parts which is the general term.

HEARING OFFICER: Which is basically nuts and bolts?

THE WITNESS: Yes. We order all Bell approved drawing numbers.

[193] HEARING OFFICER: Bell approved?

THE WITNESS: Approved drawing numbers. Those are prints. All min-max. Those are items that the company wants to set up. They want to keep a minimum amount. When it gets below a certain amount we automatically put in an order. Now not all factory supplies, a good quantity of factory supplies like paints and stuff like that.

I think that is the extent of our ordering. In dealing with—I don't know how much you want me to go into our dealings with the purchasing department. As you have seen, we write a purchase requisition that goes to purchasing. Sometimes we give directions and sometimes we do not. Sometimes the prints call out a vendor and we have to get that vendor. At no time can purchasing change anything in our call-out without coming back to us.

HEARING OFFICER: I am not sure what you mean by "call-out." Do you have like an order card?

THE WITNESS: No.

HEARING OFFICER: What do you mean"call-out"?

THE WITNESS: The job description calls out a requirement group. A requirement group takes from the engineering print what is needed. We break that down, what's needed, in quantity and attrition and so forth. And we write what engineering calls out for PM. On it is what the engineer calls out on the print based on whatever requirements they [194] would ask for.

HEARING OFFICER: Let's say you receive a drawing from an engineer. You look at the design and you see the engineer needs a part X, Y, Z. You read this blueprint; is that correct?

THE WITNESS: Yes. We have one section that breaks down the print into what we need.

HEARING OFFICER: If they come across a part X, Y, Z, they know they have to order it?

THE WITNESS: Right. Then we have one group that

writes purchase requisitions. Sometimes we are allowed attrition based on an overall attrition factor. We set the scheduled dates based on the line of balance chart. We set the schedule based on a very complicated procedure. I couldn't go into that unless you want it.

We basically have to take the date projected, the date the engineer wants it made by. We get the lead time, a delivery time, and an allowance for purchase. Then we have to back off what we call "In Dated Charts." Then we have to get it in line to hit the end date as requested. We get that information from a master schedule group who feeds that to us, what they need.

Now the purchase requisition goes to the purchasing department. If at anytime they cannot meet the delivery date we have another section within our group, what they [195] call "follow-up schedulers."

HEARING OFFICER: Who is "they"?

THE WITNESS: Purchasing. Or if they cannot get the material they have to contact our follow-up man. We do all the leg work between engineering and purchasing. If they cannot get the material we have to try to get the engineer to deviate.

HEARING OFFICER: You mean to find a substitute if possible?

THE WITNESS: Right. They offer a substitute the vendor can give us. We take that to engineering and try to get them to change it if they will. If they do they have to put out an engineering change order. Based on this engineering change order we then order purchasing to change their PR, and we write another, what they call a change of purchase "Rec", COP, which changes the original. This basically says based on the EO and based on the information we have from engineering we can now order what you offered us. Then they order accordingly.

The follow-up man's basic job is to see that it is in the house in time. If it isn't we have to go into an immediate talk about the rescheduling of the job and everything based on that. That is basically the job of our people in the area of purchasing.

HEARING OFFICER: All right.

[196] Q. (By Mr. Laracy) You make orders of raw materials?

A. Yes.

Q. How about semi-finished parts or forgings or purchased parts?

A. Forgings are raw materials. Semi-finished parts would be Bell drawing numbers.

Q. Pardon?

A. It's usually a Bell Drawing number with maybe an operation to pick it up in the plant. That's a re-write on the "PR" and a pickup when it comes in. We issue travellers to pickup work in the plant.

HEARING OFFICER: A Bell drawing, is that a design that has been approved by Bell like a blueprint?

THE WITNESS: Yes.

HEARING OFFICER: You look at that and decide what parts you need?

THE WITNESS: On the top management level they have what they call a make or buy committee to decide whether they are going to make it in the house or send it to a vendor. If they decide to buy in total they send the prints out. If we got the prints today they would say make. Most of the time we furnish material, not always.

HEARING OFFICER: You are referring to the Bell drawings and you are talking about a design that has been sent to your department with an approval from higher management [197] to make the purchase?

THE WITNESS: Right.

Q. (By Mr. Laracy) Are the purchase requisitions put in from your department?

A. Yes, sir.

Q. How about finished parts?

A. Well, I don't know exactly what you mean by "finished parts". It could be a nut, a nut is a finished product. A finished part is in effect a Bell drawing number if you are talking about an assembly that is put together and brought in in total. You could call a nut a finished part.

Q. Would those requisitions be processed from your department?

A. Yes.

Q. Are you a Scheduler, manufacturing release and material?

A. Yes, sir.

Q. Is this your job description?

HEARING OFFICER: Would you have this marked for identification?

MR. LARACY: This will be P 16.

(The document above-referred to, was marked Petitioner's Exhibit No. 16 for identification)

THE WITNESS: This is our job description.

MR. LARACY: I would like to enter Petitioner's Exhibit 16 into the record.

[198] HEARING OFFICER: Any objection, Mr. Winch?

MR. WINCH: Again no objection to the authenticity. I object to the relevancy.

HEARING OFFICER: All right.

MR. WINCH: Does that adequately—

HEARING OFFICER: Just a moment.

All right, I am going to overrule your objection, and Petitioner's Exhibit 16 is received into evidence.

(The document above-referred to, heretofore marked Petitioner's Exhibit No. 16, was received into evidence)

HEARING OFFICER: Go ahead, Mr. Laracy.

Q. (By Mr. Laracy) Does that adequately describe your job description?

A. Yes, I will say so.

Q. You have underlined certain parts on the first page and second page. Why were those parts underlined?

A. It directly related to our relationship with the purchasing department.

MR. LARACY: At this time the Petitioner would like to introduce a six-page document that shows some of the relations between the buyers and the material control department.

HEARING OFFICER: Would you have that marked for identification?

MR. LARACY: Petitioner's 17.

[199] (The document above-referred to, was marked Petitioner's Exhibit 17 for identification)

MR. LARACY: At this time I would like to introduce Petitioner's Exhibit No. 17 into the record and I will like to have Mr. White describe it.

MR. WINCH: I now ask you, before you start questioning him on it, is it offered into evidence?

MR. LARACY: Yes.

MR. WINCH: Again no objection to the authenticity of it, but I object to the relevance.

HEARING OFFICER: On the same basis I will overrule Mr. Winch's objection and receive Petitioner's Exhibit No. 17 into evidence.

(The document above-referred to, heretofore marked Petitioner's Exhibit No. 17, was received into evidence)

HEARING OFFICER: Off the record.

(Discussion off the record)

HEARING OFFICER: Back on the record.

Q. (By Mr. Laracy) Let me caution you, Mr. White, do not use initials because it may be hard for the decision writer.

A. I will be brief. These are castings that we have ordered.

HEARING OFFICER: Excuse me, Mr. White. Unfortunately, [200] Mr. Laracy, I think your explanation of why this was offered was off the record. Could you state briefly why you offered this so the decision writer will know?

MR. LARACY: Petitioner's Exhibit No. 17 was introduced to show many of the decisions in purchasing raw materials are made by the material control department. And if there is any misinformation by the material control department or an engineering change is made these requisitions have to come back to the material control department for the verification or change.

HEARING OFFICER: Okay, fine. Now, I believe you asked Mr. White to explain these.

Q. (By Mr. Laracy) Would you explain this six-page document briefly, and remember the decision writer has to interpret this?

A. This is basically ordering a lot of castings, to which we added the purchase is complete for engineering drawing and explaning what "specs" is and why it had to be

put on to those castings, setting up the option quantities that purchasing could buy and suggesting the vendor buy it from—and suggesting the vendor that they should buy it from based on past history.

HEARING OFFICER: By casting, are those more or less for molten steel or for molten metals of some sort?

THE WITNESS: Right.

[201] HEARING OFFICER: You are just ordering castings for them?

THE WITNESS: Yes, the finished castings.

HEARING OFFICER: And the suggested source, that is down at the bottom here on the left? The first one for example says "Frontier Bronze Corporation?"

THE WITNESS: Yes. And we give a previous PO so they can refer back.

HEARING OFFICER: Who is "they"?

THE WITNESS: For purchasing to refer back.

HEARING OFFICER: Let's say in checking back on a preivous PO they find the work done by that particular vendor was not satisfactory. Would the buyer then select a new one?

THE WITNESS: We would not suggest it because we handle all the MDR scraps or any problem relating to rejects on a casting. We have got to recommend it. That is in our job description. We handle all the MDR's.

HEARING OFFICER: If it were a part you never before purchased, who would make the suggestion?

THE WITNESS: The buyer. Many of the prints do call out. The engineer tells us what buyer to use. I have it in a couple. It's on the print. They then establish the purchase order exactly as we wrote it.

HEARING OFFICER: Who is "they"?

[202] THE WITNESS: The purchasing department.

HEARING OFFICER: The buyer?

THE WITNESS: Yes. Basically the girl types up the PO exactly as we wrote it adding the quality "specs" which the quality department added to it. The quality man adds what specifications he needs for each.

Q. (By Mr. Laracy) Mention each page as you talk about it.

A. That's Page 2. That is the extent of Page 2. Page 3, they refer to what we mentioned about the option to buy different quantities. We give almost an alternate quantity for buying. They can decrease or increase based on what information they have.

Then Page 4 is a request by the purchasing department that they received more than what they wanted and asking us in effect—it says the above referenced item has been overshipped according to Procurement, Accounting and Receiving records. Please acknowledge and advise if overshipment is acceptable or unacceptable to BAC requirements. We investigated and found they were within 10% allowable attrition factor. We then wrote—now we go to the next page. We wrote what they call a "Change of Purchase Requisition," again showing we would accept this quantity as per the purchasing request and based on future requirements. And then purchasing merely writes up a change of [203] purchase order, types it up, showing acceptance of this because the PO is what they accept it on. This PO has to go into the Receiving Department before they accept it. They have to have the amended one in order to accept the overshipment.

HEARING OFFICER: I see.

Mr. Laracy, the copy of Petitioner's Exhibit 17 that you offered is not clear.

Off the record.

(Discussion off the record)

HEARING OFFICER: Back on the record.

Q. (By Mr. Laracy) Really then the latitude and discretion of the buyers are limited when purchasing raw materials?

MR. WINCH: Now I object to that as calling for a conclusion. It is beyond the knowledge of the witness.

HEARING OFFICER: Mr. Laracy, I believe that the answer that you are seeking is something that really has to be determined on the basis of the evidence. I will sustain the objection.

MR LARACY: That's all I have.

HEARING OFFICER: Okay.

CROSS-EXAMINATION

Q. (By Mr. Winch) Then, Mr. White, I take it from your testimony that your answer would be the same as the one [204] given by Mr. Miranda in answer to my question? You are not actually placing an order. You are making the requisition. The requisition goes to the purchasing department and the purchasing department actually places the order?

A. They place the order, true.

Q. Now, take this Exhibit No. 17. On the second page in the upper right-hand corner you are able to read that No. 492710-6 and recognize that the purchaser who has charge of this particular item is Mr. Gephardt?

A. That's right.

MR. WINCH: Right. No further questions.

CROSS-EXAMINATION

Q. (By Hearing Officer) Sir, I think there has been testimony, but just so that it is clear, the last number and the number to which Mr. Winch has referred is the identification number of the buyer; is that correct?

A. That's right.

Q. Also you mentioned that you have a follow-up man, is that what you call him, in your department?

A. This is—it says in the job description "follow-up schedulers contact procurement and monitor procurement promise dates."

Q. Your follow-up schedulers contact buyers?

A. Yes.

[205] Q. Do the follow-up schedulers contact any vendors?

A. No, sir.

HEARING OFFICER: All right.

MR. WINCH: You asked one question of the other witness I think I should ask.

RECROSS-EXAMINATION

Q. (By Mr. Winch) Can you as a material control

representative commit the company to a contract with the customer?

A. That is a very hard question to answer when you say commit the company to a contract.

Q. Actually it is the purchasing department that makes the commitments, isn't it?

A. I think that is what you are leading to. It could be said we commit it to the extent we work with the production workers. We work with the master schedulers. We get the lead date and the quantity involved. At no time can purchasing change anything in the "Rec" that we have put in without coming back to us as they did by memo before. The money value they may commit.

Q. The actual commitment of the company is made by purchasing?

A. That is the final phase after a total team effort, yes, I would say.

MR. WINCH: Thank you. That's all.

[206] MR. LARACY: That's all.

HEARING OFFICER: All right, sir, please step down.

(Witness excused)

MR. LARACY: Off the record.

HEARING OFFICER: Off the record.

(Discussion off the record)

HEARING OFFICER: On the record.

MR. LARACY: I would like to call Mr. Edward Nolan to the stand.

Whereupon,

EDWARD NOLAN

was called as a witness by and on behalf of Petitioner and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Laracy) Would you state your name, please?

A. Edward Nolan.

Q. Mr. Nolan, what is your occupation and your employment background at Bell Aerospace?

A. I am considered to be a Class 2 Buyer. As far as my background goes, and if memory serves me correctly, 1942, a part of '42 and a part of '43 I was a milling machine operator, a spot welder, and a sub assembly. In '51—after '43 I had other things to do. In '51 I rejoined Bell as a [207] tool control man or an expeditor. Then I was moved around, tool termination and stuff. And I think I was laid off in '59. I got back into Bell Aerospace in '63 as an expeditor. In '65 I became a buyer Class 2. Then basically that is my history with Bell.

Q. What is the date of your latest hire?

A. My latest hire?

Q. Your latest hire, roughly, month and year.

MR. WINCH: May I read you something?

THE WITNESS: January '63.

Q. (By Mr. Laracy) January '63?

A. To the best of my recollection.

Q. Now, Mr. Nolan, the Employer entered into testimony here the buyer Class 2 job description. Would you look at this and tell us does it fit your job description as you know it?

A. Yes. In all honesty I looked at this prior to my taking the stand. And I have to take exception. I don't think this covers my duties as such. The parts that I take exception to, I have noted them on my copy. If you have a copy of that E 13 job description rating—

HEARING OFFICER: This is Employer's Exhibit No. 6.

THE WITNESS: I don't know really. Is it?

MR. LARACY: Yes, E 6.

THE WITNESS: Yes, yes. It says here, and I am looking [208] at approximately 2, 4, Line 6. We are speaking about the buyer: "Determines the type of equipment necessary to produce the parts or tools." I don't think I determined this.

Q. (By Mr. Laracy) Do any of the buyers do this to your knowledge?

A. I am speaking for a Class 2 Buyer.

Q. Yes, do any other Class 2 Buyers?

A. I imagine they would fall into the same category, meaning they are restricted likewise.

HEARING OFFICER: You said you imagine. Do they or don't they?

Can you state for sure?

THE WITNESS: Up until this meeting I was not sure who was a Class 2 Buyer and who was not. It's awful hard for me to commit myself. I don't know all of them. Oh, I did know some of them.

Then a couple of lines down it says, Number 2, "Forwards bids to the Estimating Department for approval". I think that is a function that has been bypassed.

HEARING OFFICER: What do you mean "bypassed"?

THE WITNESS: Well, I do not. We forward bids to whatever the chain of command is involved in the department, whatever chain of command is involved in the department for [209] approval or signature.

HEARING OFFICER: In the Procurement Department?

THE WITNESS: Right, sir.

And then the bottom three lines says, "Assigns work of placing orders for less complex parts or tools or portions of large orders to Class 1 Buyers."

There is no such animal.

Q. (By Mr. Laracy) As a Class 1 Buyer?

A. Right, sir.

Q. There is a senior Buyer?

A. A higher grade you mean?

Q. Yes.

A. Right.

Q. Otherwise the job description is fairly accurate?

A. In my interpretation, yes.

Q. What is your particular job function in the Purchasing Department, Mr. Nolan?

A. Well, when I am not restricted I select a buyer to produce the part that our material control people have requested or parts if the requisition reads in a like manner.

HEARING OFFICER: I didn't understand that. Could you go through that again?

THE WITNESS: I said when I am not restricted I select the supplier who can make what the purchase requisition spells out.

[210] HEARING OFFICER: By "Restricted" do you mean unless somebody specifies what vendor you should go to?

THE WITNESS: Yes. That is for one or in some instances where I handle Bell Helicopter parts I am restricted by their choice of supplier, meaning they tell me where I can go for certain services. They are our customers and they spell out on it the approved sources so to speak.

HEARING OFFICER: Who is your customer?

THE WITNESS: Bell Helicopter.

HEARING OFFICER: Are you restricted most of the time or not?

THE WITNESS: Generally speaking, yes.

HEARING OFFICER: So, generally speaking you can choose your own vendor?

THE WITNESS: Well, yes, if this is not a repetitive item. I would say right now, my guess now or my opinion—I will substitute the word "opinion"—is that approximately 80%, possibly higher, of all the items that are being purchased are repetitive items.

Q. (By Mr. Laracy) In these cases you would use the same vendor? Is that what you mean?

A. Well, if—in most cases. But we do reopen to competition on occasions to see whether or not he is moving—whether or not he is holding the line with regards to price.

[211] HEARING OFFICER: Can you do this on your own, sir?

THE WITNESS: Yes.

HEARING OFFICER: Reopen the bids?

THE WITNESS: Right, meaning send out an RFQ or Request For Quotation to other suppliers than the established source.

HEARING OFFICER: If another vendor sent in a bid that was more attractive than the incumbent vendor,

the one you are dealing with, then could you on your own for orders under $5,000, switch vendors?

THE WITNESS: Well, the set up I have between my supervisor and myself is that we discuss all possibilities of alternate sources.

Q. (By Mr. Laracy) What commodities do you buy for the company?

A. 85% of the workload or the requisitions that hit my desk have to do with helicopter parts as such, whether it's blades, doors, cowles, or firewalls, any such thing. The helicopter program was at one time the bread and butter of Bell Aerospace. It's the Minute Man now because of phasing out of the helicopter program in some cases or parts.

Q. Are these helicopter parts finished raw materials or semi-finished? What do you mean you purchase helicopter parts?

[212] A. Usually they are machined items. In some cases they could be rubber goods, gaskets, shims and shields, screen assemblies. I say anything that has to do with the parts that go into the build up of helicopters.

Q. These parts are to be used in manufacturing here at the Buffalo area?

A. Right. When they are assembled they go to Texas where the final assembly takes place.

Q. Where do these requisitions come from for these parts?

A. Most of the requisitions, and this is my guess, about 95% come from Material Control.

MR. WINCH: Now, I object and move to strike that part of the question as a guess. If the witness does not know, I wish that he would say so. I object to the answer.

THE WITNESS: I will say—

HEARING OFFICER: Just a minute.

MR. LARACY: Wait a minute. This is his job. I think he can testify.

HEARING OFFICER: Mr. Winch, your objection is to the way the question was phrased or to the witness' response?

MR. WINCH: To the witness' response.

HEARING OFFICER: Let me instruct the witness

to answer the questions to the best of your knowledge and belief. If [213] there is something you do not know or something you are not sure of, you know, just say so. On that basis I believe that will handle the objection.

THE WITNESS: Okay. Then if I may, I would like to change the percentage and say 75% of my workload. At least 75% is composed of helicopter requirements.

Q. (By Mr. Laracy) And these requisitions for these parts for the helicopter program come from the Material Control Department?

A. The 75% that I mentioned come from the Material Control Department plus others.

Q. On what percentage of that 75% does the Material Control Department designate a vendor?

A. These are all repetitive items. And you've got to remember that there have been some changes incorporated over the years, but these are repetitive items and therefore all they refer to is the previous purchase order.

Q. When you do select a vendor how do you do selecting—how do you select a vendor?

A. By an RFQ really. This is a Request For Quotation that goes out to at least three different supply houses, if I can use the words "supply houses."

HEARING OFFICER: Who selects the three supply houses?

THE WITNESS: I do. I have that choice.

HEARING OFFICER: All right.

[214] THE WITNESS: Now, all things being equal, the lowest of the three would get the order.

HEARING OFFICER: Who makes that determination?

Do you determine if all things are equal?

THE WITNESS: Being delivery, terms, and conditions.

HEARING OFFICER: Do you make this qualitative comparison? In other words, you have your quotes in front of you, your prices. Do you qualitatively compare the vendors to determine things such as the possible—maybe I shouldn't use the word "qualitative". Do you compare delivery schedules, reliance and so forth?

THE WITNESS: The past history of the supplier.

HEARING OFFICER: You do that on your own?

THE WITNESS: Yes. But here again most all the packages I solicit my supervisor knows how.

HEARING OFFICER: What do you mean by that?

THE WITNESS: Well, he has X number of years experience.

HEARING OFFICER: How do you do it?

THE WITNESS: I walk over to his stall and say, here, Bill; I've got something here we can save ten cents a piece on? What do you think of the setup?

HEARING OFFICER: And?

THE WITNESS: And as a rule, why he can accept my selection for anything under $5,000.

[215] HEARING OFFICER: All right.

Q. (By Mr. Laracy) How do you pick a supplier? If I wanted to order—production control might want to order $5,000 ashtrays and they sent the requisition. How do you pick a supplier of ashtrays?

A. Here again I said most of the items that hit my desk are repetitive. If they were new I would solicit the know how of more experienced buyers. I could use a Thomas Register or Conover for recommendation purposes. There are always recommendations that come with brochures and facility lists. I would check those too.

Q. You can only act on requisitions that are supplied to you; is that right?

You have to have a requisition in order to purchase anything?

A. Yes.

Q. It seems to be very well established any purchase over $5,000 has to be authorized by higher authority; is that right?

A. I do have to get a signature or an approval, right.

Q. And purchases under $5,000 are there occasions when you have discussions with your supervisor or higher authority before you put through the purchase order?

A. Yes.

Q. Could you give us examples?

[216] A. Under $5,000—and this is a repetitive item and this is just in the making right now. It is a screen assembly we buy from—a wire cloth screen assembly

that we buy from a supplier in Bellwood, Illinois. He jacked his price up $10.00. It was from approximately $46 to $56. This is quite a drastic increase in price. So, I brought this to my supervisor's attention. It only amounts to about $3200, which says I can make my move without any restriction. As a precautionary measure I still discuss this with my supervisor.

HEARING OFFICER: Do you have to?

THE WITNESS: I did not have to.

Q. (By Mr. Laracy) Are all purchases final? Do all purchases, even under $5,000, go through the supervisor's hand before they are actually sent out in the mail?

A. I am not sure I understand that question.

Q. Does your supervisor see all the purchase requisitions that pass through your hands?

A. Yes, he does in this respect, that after or prior to or upon receipt of a purchase requisition it is my supervisor, if this particular requisition belongs or is slotted into our group, who assigns a buyer to that particular requisition. After the order has been formalized and a purchase order number has been assigned the supervisor checks it prior to it going into the typing pool where it becomes formalized. [217] So, to answer your question, yes.

I am assuming that he has done this on most of them. When he is not there somebody else does it or sometimes it may by-pass him. That is the procedure as it is set up in our group. It has to be put on his list or submitted to him through the group.

We have a check off list. He also has the bills that have been submitted. He looks them over for phraseology or whatever is lacking. He then forwards it or tells the girl to take it out to the typing pool.

Q. What is a "check off list"?

A. Not a check off list exactly. Under $5,000 there is no check off list. Above $5,000 there is a check off list.

Q. How many buyers are there approximately?

A. Well, as of yesterday it was twenty-five.

Q. How many supervisors are there for these twenty-five buyers?

A. This is the strange part to me. There are eight supervisors, not counting the two cost analysts.

HEARING OFFICER: Excuse me. There are two what?

THE WITNESS: Eight supervisors for the twenty-five buyers. If you start from the top and work down to—

HEARING OFFICER: How high are you going for the top?

THE WITNESS: Mr. Seitz, who is the head, Mr. Cleveland, who is next, purchasing agent, Chuck Rae, Mr. Folker, Mr. Muni, [218] which accounts for five, Mr. Hamann, who is my boss and in charge of my particular section, Mr. Koningisor, who is in charge of another group, and Mr. Wing, who is in charge of the other group.

HEARING OFFICER: There are many of them in accordance with that organizational chart we have, right?

THE WITNESS: Right.

If I may elaborate on that, on any order over $5,000 any combination of five people could hold up the order, any combination of five supervisors. Let's make that four supervisors and the cost analyst could hold up my order.

HEARING OFFICER: For over $5,000?

THE WITNESS: For over $5,000.

Q. (By Mr. Laracy) What is the cost analyst's function in the purchasing department?

A. He reviews the buyer's package, assuming here it is over $10,000.

HEARING OFFICER: Only if it is over $10,000?

THE WITNESS: If it is over $10,000.

HEARING OFFICER: Does he have any veto power or does he look it over for accuracy and so forth or what?

THE WITNESS: When you say "veto power", can he hold it up in any way?

HEARING OFFICER: Can he overrule the buyer in any way?

[219] THE WITNESS: There have been occasions where he refused to sign because he was not in com-

plete accord with the data in this particular folder with regards to this particular purchase.

HEARING OFFICER: Like what? Can you explain that?

THE WITNESS: Well, a vendor submitted a price in essence composed of four different items, the actual cost to make the part. His so-called G and A—and Mr. Seitz went into this in his testimony, general administrative cost, his so-called overhead and the profit factor. He may take exception to any of these. There have been occasions—

HEARING OFFICER: The analyst may?

THE WITNESS: Right.

HEARING OFFICER: I think we went into this where the analyst may even go in and audit the books of the vendor.

THE WITNESS: The audit is done by the so-called chief negotiator. On the chart it's Mr. Huber or one of his people.

HEARING OFFICER: The cost analyst stays at the Bell Plant pretty much?

THE WITNESS: To the best of my knowledge. I don't know of the cost analyst ever going out.

HEARING OFFICER: Okay.

Q. (By Mr. Laracy) Mr. Nolan, I would like to show you [220] Company's Exhibit No. 9, Employer's Exhibit No. 9, which is commitments by buyers. Would you look at that?

A. Yes.

Q. Now, on the left-hand side there is a column commitments under $5,000?

A. Right. This is one here where if memory serves me right, Mr. Seitz mentioned. This is a good example of the latitude of the buyer because he needed no signature for the seven million dollars that has been committed on this particular piece of paper.

Q. Mr. Nolan, what are blanket orders?

A. Well, I don't get into them, but my understanding is it is an order that has been written up, agreed to price wise, delivery-wise, set up once a year.

Q. These orders are supplemented as the supply and demand requires?

A. The requirement may be.

Q. Is it one purchase order at one price and supplemented?

A. There could be from to many, many items on the purchase order.

Q. Would you say a fair portion of this money on the left-hand side could be blanket orders that have been set up?

A. Here again I do not have access to the company's file and I cannot get EDP runs. I can't answer that.

[221] Q. What are small dollar value purchases?

A. Small dollar purchases, well, I have had them from $15 and up. I have handled some from $15 and up.

Q. Would that be purchases under $1,000?

A. I consider $15 under $1,000, yes.

Q. Are there many purchases under $1,000, $1,000 or less?

A. Yes. When I saw this I was fairly well shaken up because I have seen a report—now I am bringing to your attention this particular Exhibit No. 9 says from January '69 through July of '70. That's eighteen months. Now, I have seen a report for '69 where the total orders committed—and I am trying to remember. I don't have it here. It's in one of those folders. But a total of 21,000 orders were placed during the year of '69. 19,000 approximately now—19,000 of the 21,000 orders that were placed in '69 were under $1,000. 19,000 of 21,000 were under $1,000.

The point I am trying to prove here is these were more or less cut and dry repetitive items.

HEARING OFFICER: Who prepared this report?

THE WITNESS: One of the supervisors.

HEARING OFFICER: Is it an official company document?

THE WITNESS: It is an official company document —I mean departmental document. I am imagining the powers that be did get a copy of this. I seem to think this is the way it works from the way our activity report works.

[222] Q. (By Mr. Laracy) Was this an activity report for 1969?

A. From one of the supervisors to his higher supervisor.

Q. What are data phone contracts?

A. Here again this is not my field. I do not get into this. By the way, I have seen its operation. If there is anyone on either side that wants to correct me, okay. It is a piece of paper about the size of this pad that has spelled out on it the parts number and the quantity which is fed into a computer. The supplier at the other end is alerted and he sets this electronic device going. And it's a girl that does this. One of the secretary's sends it through the computer and it registers at the supplier's place of business, meaning he had an order for whatever the item is on that piece of paper.

Q. Where does the girl get that piece of paper?

A. I don't know. It comes from some place. I really don't know.

Q. Now, Mr. Nolan, I would like to show you Employer's Exhibit No. 10, which is a purchase requisition input to procurement. On the left-hand side they have the number of requisitions initiated by Local 1286, and on the right-hand side they have purchase requisitions initiated by twenty-six other sources. Would you look at that for one second?

[223] A. I would have to pass. I really—I couldn't possibly.

Q. I would like to ask you this question. The requisitions, there are 5,050 requisitions processed by Local 1286 members and other sources 10,927. However dollar value-wise, who would comprise the greatest dollar value there, the requisitions from the machine department, tooling department and production or these miscellaneous requisitions?

A. Well, if I may, in 1968, and I am a buyer Class 2, I placed, according to interoffice memos, $1,200,000 worth of business. I would say here again that—now he is going to ask me how I know. I don't. I just have to go by what is on my desk.

MR. WINCH: If the Hearing Officer please, if he doesn't know I object to him answering the question.

THE WITNESS: The 120,000—

HEARING OFFICER: Wait, There is an objection. Do you know the dollar value that you handled?

THE WITNESS: I know the dollar value that I handled, yes.

HEARING OFFICER: Do you have knowledge of what the total department's dollar value was?

THE WITNESS: Total departments?

HEARING OFFICER: Yes.

THE WITNESS: If I have it here, I will testify.

HEARING OFFICER: Let's go off the record.

[224] (Discussion off the record)

HEARING OFFICER: On the record.

So, off-the-record we discussed it a little bit and you, Mr. Witness, indicated that you could not testify with respect to the question Mr. Laracy asked of you?

THE WITNESS: To this extent, right. I couldn't tell you the total dollar value of either the left or right hand side percentages.

HEARING OFFICER: Referring to Employer's Exhibit No. 10?

THE WITNESS: Right, yes.

HEARING OFFICER: With that in mind I will sustain your objection.

Q. (By Mr. Laracy) Do you have any contact with buyers in Texas?

A. I have to get the permission of the program manager before I can contact anyone in Texas.

HEARING OFFICER: By "anyone in Texas" you are referring to Bell Helicopter?

THE WITNESS: Right.

HEARING OFFICER: You are free to contact other vendors in Texas though if the need should arise?

THE WITNESS: Right.

Q. (By Mr. Laracy) Have you had occasion to contact buyers in Texas?

A. Yes, with the program manager's permission I talked to [225] buyers in Bell Helicopter.

Q. You say most of the parts you purchase are for the helicopter program which eventually winds up in Texas?

A. As sub assemblies. Oh, if I may, or spares.

MR. LARACY: The Petitioner would like to enter now its Exhibit 18 which is the index of departmental job instructions.

(The document above-referred to was marked Petitioner's Exhibit No. 18 for identification)

Q. (By Mr. Laracy) Would you look at this?

HEARING OFFICER: This is marked Petitioner's Exhibit No. 18 and it is a departmental job instruction, Number 121-001.

Q. (By Mr. Laracy) What is this departmental job instruction index?

MR. WINCH: What was the question?

MR. LARACY: What is this departmental job instruction index which is Petitioner's Exhibit 18.

MR. WINCH: This has not been offered in evidence?

HEARING OFFICER: Well, you have gotten it marked as an exhibit.

MR. LARACY: The Petitioner moves to have P 18 introduced into evidence.

MR. WINCH: Would you give me a minute to read it? I am trying to see what it is.

[226] HEARING OFFICER: All right.

MR. WINCH: No objection.

HEARING OFFICER: Hearing no objection then, Petitioner's Exhibit No. 18 is received into evidence.

(The document above-referred to, heretofore marked Petitioner's Exhibit No. 18, was received into evidence)

Q. (By Mr. Laracy) Mr. Nolan, what is the departmental job instruction index?

A. Well, it seems to me, in my personal opinion we get bombarded with all kinds of instructions. This is just what this is, memos. In other words, what I am trying to say is our particular job is pretty well spelled out for us.

MR. WINCH: Well now, I object to the answer and ask it be stricken as not responsive.

HEARING OFFICER: Sustained. But would you repeat the same question? You asked him to identify what this was; is this correct?

MR. LARACY: Yes.

HEARING OFFICER: Can you identify this document?

THE WITNESS: It is what he said it is, a departmental job instruction sheet.

HEARING OFFICER: Could you be more specific?

THE WITNESS: Evidentally this is the index, the master index.

[227] HEARING OFFICER: Is this an index to all the departmental job instructions that you have received?

If you were to keep this in a book would this be considered an index of this book?

THE WITNESS: I notice there is one that has been left out. Basically, yes, this is what I would keep in my book.

Q. (By Mr. Laracy) Is there a series of instructions issued for everyone of these series, such as 121-001?

A. Instructions? I don't know if that's the right word.

Q. Or procedures?

A. Procedures possibly, yes.

Q. For everyone of these series there are sets of procedures or instructions set up which pretty much confine the buyer?

MR. WINCH: Well, I object to that as calling for a conclusion.

HEARING OFFICER: Would you rephrase your question, please, Mr. Laracy?

MR. LARACY: It is a departmental job instruction.

HEARING OFFICER: Right. Mr. Laracy, could you perhaps ask your questions without a conclusion?

Q. (By Mr. Laracy) Let me show you Employer's Exhibit No. 12, which is 121-300. That is Employer's Exhibit 12. Now, looking over to Petitioner's Exhibit No. 18, is that the [228] set of instructions, that 121-300, advance commitments?

A. No. The one you just handed me, 121-300 from a fast reading does not refer to advance commitments. The departmental job instruction sheet—

HEARING OFFICER: Excuse me. May I see that for a moment?

THE WITNESS: Yes, sir.

HEARING OFFICER: Employer's Exhibit No. 12 is entitled Preparation For an Initiation of a Sub Contract. According to Petitioner's Exhibit 18, 121-300 relates to several other areas it seems.

MR. LARACY: I think that 121-300, E 12, is part of these instructions which is listed on the master index as 121-300.

HEARING OFFICER: I see.

Q. (By Mr. Laracy) What I am trying to get across is is there a booklet or manual of job instructions that are issued to the buyer?

HEARING OFFICER: You may answer that, sir.

THE WITNESS: Once again please?

Q. (By Mr. Laracy) Is there a booklet or manual issued by the company to the buyers?

A. Well, all—

Q. To guide in—to guide you in your—in the performance of your duties?

[229] A. Yes, it is.

HEARING OFFICER: Is Employer's Exhibit No. 12 an example of this?

THE WITNESS: Of those instructions, yes.

HEARING OFFICER: Did you have any further questions with respect to E 12?

MR. LARACY: No. I have one more exhibit and I think that will be the last. This will be Exhibit—

HEARING OFFICER: Excuse me.

Just as a general rule or as a general statement, do the instructions such as Employer's Exhibit No. 12 and other such departmental job instructions, or they very rigid? I mean, do they cover you step-by-step or every step you take or are they statements of policy or general instructions as to how you might go about performing your job or specific task?

THE WITNESS: Statements of policy? I would have to say yes. The next part was . . .

HEARING OFFICER: Do those instructions guide you step-by-step for every action you take or in your

opinion as a buyer would you be free to exercise your own judgment?

THE WITNESS: They do guide you for procurements above $10,000.

HEARING OFFICER: Those instructions guide you for procurement above $10,000?

[230] THE WITNESS: Yes.

HEARING OFFICER: Would they have any applicability for procurement above $10,000?

THE WITNESS: Yes.

HEARING OFFICER: Would they have any applicability for purchases under $10,000? Let's say under $5,000.

THE WITNESS: I really don't remember. I would have to check this book of instructions.

HEARING OFFICER: All right.

MR. LARACY: I think this will be our last exhibit. I would like to introduce Petitioner's Exhibit No. 19.

(The document above-referred to, was marked Petitioner's Exhibit No. 19 for identification)

Q. (By Mr. Laracy) Would you describe that exhibit, Mr. Nolan?

A. I have never seen one of these before until this so-called meeting of the minds or a day or two prior to—but this is in reference to one of my co-workers who is a senior buyer. From what I can pick up these are items that the buyer has a right to do or perform. The three here—he is allowed to make long distance telephone calls—that are checked off—and he is entitled to a material and package pass-permanent, and he is allowed to make material shipping orders.

HEARING OFFICER: Have you ever seen one of these four?

[231] THE WITNESS: I have not. I imagine there is one in the record for me or this must have been filed because here again it is a company procedure or form.

HEARING OFFICER: But you do not know for sure, is that correct, that there is one made out for you?

THE WITNESS: I don't know. I say this particular

one, referencing this particular buyer is the only one I have ever seen.

HEARING OFFICER: Do you have to obtain permission to make long distance phone calls?

THE WITNESS: No.

HEARING OFFICER: Do you know what a material and package pass is?

THE WITNESS: Yes. I myself has to get a pass now in order to carry anything out.

HEARING OFFICER: To carry anything out of the plant?

THE WITNESS: No, wait, I better—kill that. My badge says I can do it. Material and package pass . . . material and package pass. Well, this one here—like I said, I have never seen this. Actually it does not register with me right now.

HEARING OFFICER: Say—you say your badge authorizes you to carry packages through the gate at the company?

THE WITNESS: It authorizes me to carry—technically I may not get this phrase right. My badge says I can take work home with me.

[232] HEARING OFFICER: I see. Do you know what a material shipping order is?

THE WITNESS: This I do know because I make a lot of those. A material shipping order is just a piece of paper that alerts the so-called people on the floor that procurement would like to get out of the plant for various reasons certain items, whether it is Bell furnished material for the vendor to work on or tooling on loan or some such thing. I make that out. Of course here again all I do is make out a material shipping order and it is processed through the material control group.

HEARING OFFICER: Okay.

MR. WINCH: If that is offered—is that offered in evidence?

HEARING OFFICER: No. Correct me if I am wrong. I don't think Petitioner's Exhibit 18 has been offered in evidence either, has it?

MR. LARACY: Yes.

MR. WINCH: 19 I object to. I don't see where it has any relevance.

MR. LARACY: Now I would like to offer it. I will get it on the record.

HEARING OFFICER: Pardon?

MR. LARACY: 18 is entered?

HEARING OFFICER: 18 is received. How about 19?

[233] MR. LARACY: I would now like to enter into the record Petitioner's Exhibit No. 19.

MR. WINCH: That I object to. I don't see the relevance.

THE WITNESS: Can I speak on that?

HEARING OFFICER: On what, No. 19?

THE WITNESS: On No. 19.

HEARING OFFICER: Yes, go ahead.

THE WITNESS: Well, the reason I would like to just mention this is the fact it's been said the buyer has so much latitude. Mr. Seitz mentioned the girl and the expeditors are more or less—I may not have the phraseology—under the supervision—and this could be the wrong word—of the buyer. Here again I cannot give any secretary a pass to go home early.

HEARING OFFICER: Well, wait. I thought maybe you could explain what P 19 is. To be honest, I am not sure what it is.

MR. LARACY: I will withdraw that.

HEARING OFFICER: You will withdraw it?

MR. LARACY: I will withdraw Petitioner's Exhibit No. 19 from the record.

(The document above-referred to heretofore marked Petitioner's Exhibit No. 19, was withdrawn)

Q. (By Mr. Laracy) Mr. Nolan, are you familiar with your fringe benefits?

[234] A. Fairly well, yes.

Q. Are your fringe benefits basically the same as salaried employees in Local 1286?

A. I have taken the liberty to check this out and I would say yes.

Q. Are there any differences that you are aware of?

A. Well, there is only one that upsets me and this

is the fact, if I remember correctly, they get time and a half for overtime, being salaried and in purchasing, and I do not.

Q. Do you receive time and a half for overtime should you work overtime?

A. It's been so long since I have had any I honestly couldn't say.

Q. Should you work overtime who would give you authority to work?

A. It would have to come from either Mr. Seitz or Mr. Cleveland I seem to think. Here again with the eight supervisors I do not know who would authorize this.

Q. But they would have to give you authority to work in order for you to get paid for overtime whatever the rate of overtime pay is?

A. I would have to get it from some supervisor, right.

Q. What is your salary?

A. Including the last merit raise which I just got [235] I was notified yesterday, it's $218. I am a Class 2 Buyer.

HEARING OFFICER: $218 a week?

THE WITNESS: Yes, sir.

Q. (By Mr. Laracy) Were you aware of the "top rate" of your salary before this hearing?

A. Surprisingly no.

Q. Were you aware of the fact there was a company policy "top rate" and also a natural top rate before the testimony?

A. No, not really.

Q. Where do you park out at the plant, Mr. Nolan? Is there a special parking lot for managerial employees?

A. With the rest of the employees whether they are in manufacturing or in the administrative building. It's the same parking lot. Of course they have three or four.

Q. There's no special parking lot for buyers?

A. Not that I am aware of.

HEARING OFFICER: Is there a special area?

THE WITNESS: None that I know of.

Q. (By Mr. Laracy) How about lunch rooms, Mr. Nolan? Is there a special lunch room for buyers or managerial employees?

A. A special area. They do have a private lunch or dining room.

Q. Do you eat there?

A. No, I eat in the lunch room when I eat in.

[236] Q. Do you have a college degree, Mr. Nolan?

A. No, sir.

Q. When there is an open requisition for buyers, is the policy to promote employees from the lower occupations or hire employees off the street?

MR. WINCH: I would like to have that repeated.

Q. (By Mr. Laracy) When there is an open requisition for a buyer is it the policy to promote employees from a lower occupation in the purchasing department or—

A. I am trying to remember Mr. Seitz' testimony. He said promotions or upgradings come from within.

HEARING OFFICER: Is that true to the best of your knowledge?

THE WITNESS: That is true to the best of my knowledge.

Q. (By Mr. Laracy) To your knowledge, how many of the buyers have college degrees?

A. Once again please?

Q. Do you know how many buyers have college degrees?

A. To my knowledge there is only one that has a college degree.

Q. Should you have an occasion to go off for an extended lunch period, would you need a special pass?

A. Yes.

Q. If you leave the plant early would you need a special pass?

[237] A. Yes, sir.

HEARING OFFICER: What is the purpose of the pass? Is this because of security?

THE WITNESS: You are entertaining a supplier or he is entertaining you, depending on who picks up the check. And the lunch room being or the place that we go being crowded, there are occasions when you cannot get back in a half hour. The service isn't that good.

HEARING OFFICER: Is the pass a security pre-

caution at the gate or is it to authorize you to take a longer than a half hour lunch break?

THE WITNESS: Well, it is a security pass and also an authorization to have a longer lunch.

HEARING OFFICER: Who gives you this pass?

THE WITNESS: My supervisor. I have to request this.

HEARING OFFICER: Which supervisor?

THE WITNESS: My particular supervisor is Mr. Hamann. If he isn't around then I have to see if I can pick out one of the eight other supervisors to okay it.

Q. (By Mr. Laracy) Do you do most of the follow-up work after an order is placed?

A. No. My expeditor does most of my follow-up. I get involved if any problem should arise, delivery, trouble of any source, or by special request of my supervisor to stay with it.

[238] HEARING OFFICER: Excuse me. You used the term "my expeditor"?

THE WITNESS: We have expeditors or there are expeditors assigned to buyers.

HEARING OFFICER: And you have an expeditor or expeditors assigned to you?

THE WITNESS: Well, they are not assigned to me specifically but they do handle my work.

HEARING OFFICER: I see. Do they act upon your instructions? Do you tell them what to do?

THE WITNESS: I try to keep them on the ball, yes.

HEARING OFFICER: What does that mean?

THE WITNESS: Meaning I would appreciate it very much if you would call them because I have been getting a little heat from material control.

HEARING OFFICER: If you didn't tell them to do this would they do it on their own?

THE WITNESS: They are supposed to.

HEARING OFFICER: I see.

Q. (By Mr. Laracy) Do you have any say in make or buy decisions, whether they are going to make or buy, inside make or buy a part?

A. Whether we make it inside or buy a part?

Q. Right.

A. I can only recommend.

[239] Q. Are these decisions made by other departments in many instances?

A. They are supposed to be made before the requisition hits our department.

Q. So, in most cases the determination is already made?

A. To the best of my knowledge.

HEARING OFFICER: But you have made recommendations to deviate from what the requisition suggests?

THE WITNESS: Yes, because I have made recommendations to keep work in the house.

HEARING OFFICER: To whom do you make this recommendation?

THE WITNESS: Well, the last one I am thinking of is Mr. Bob Wilson, who is Program Manager for anything that has to do with Bell Helicopter parts.

HEARING OFFICER: Okay.

Did you make this recommendation to him after you had obtained permission from your supervisor?

THE WITNESS: Mr. Hamann, My Supervisor, and myself went in and talked to Mr. Seitz with regard to so-called outside make or outside procurement.

HEARING OFFICER: Was this a meeting?

THE WITNESS: You might call it that, in Mr. Seitz' office.

HEARING OFFICER: Was the decision made at that time?

THE WITNESS: The decision to notify Mr. Wilson of our [240] recommendation?

HEARING OFFICER: Yes.

THE WITNESS: Yes, to the best of my knowledge.

HEARING OFFICER: Did you actually go and talk to Mr. Wilson?

THE WITNESS: We have what we call inter-office memos. Unfortunately I do not have a copy in my files of that memo where I asked Mr. Wilson to check to see whether it was feasible or wise to do this in the house.

HEARING OFFICER: Did you draft that memo to Mr. Wilson?

THE WITNESS: I am trying to remember. I seem to think I did.

HEARING OFFICER: Do you ever sit in on management meetings where decisions like this might be made or—

THE WITNESS: With regard to inside make or outside buy?

HEARING OFFICER: Right.

THE WITNESS: I never sat in on a meeting of that sort.

HEARING OFFICER: Do you ever sit in on any other policy making meetings?

THE WITNESS: Policy making meetings I have never sat in on.

HEARING OFFICER: Neither departmental meetings or [241] anything?

THE WITNESS: Policy making meetings I have never sat in on. I attended meetings with regard to particular programs.

HEARING OFFICER: Were these like briefing sessions?

THE WITNESS: Review.

HEARING OFFICER: Would they be considered management meetings or more work related meetings?

THE WITNESS: Well, if I understand your phraseology correctly, I would say a work type sort of meeting, whether or not per hour line or chart or scheduling we were holding our own with regards to in house requirements.

HEARING OFFICER: Okay.

Q. (By Mr. Laracy) Mr. Seitz in his testimony mentioned that a class 2 Buyer, a new hire, or new Class 2 Buyer, could be effective in two weeks. Do you agree with this statement?

A. "Effective", that takes in an awful lot of ground. He would have to be led, but I do not think he would be a managerial type of person at this particular stage.

Q. Two weeks?

A. Two weeks.

Q. Do you think it takes longer than two weeks?

A. To get oriented to the system at Bell, yes, it would definitely.

Q. Now, Mr. Nolan, the company has testified that the [242] potential top rate of Buyer Class 2 is $219 and they

also testified that the expeditors' salary, top rate, is $219. Would you explain how the one that does the buying and the one who follows up receives the same or has the same top rate?

MR. WINCH: I object to that as being beyond the witness' knowledge and calls for a conclusion. I object.

HEARING OFFICER: Sustained. I think the record will have to speak for itself on that point, Mr. Laracy.

Q. (By Mr. Laracy) Were you aware of the fact the buyer Class 2 potential top rate was $219 before this hearing?

A. Prior to the first meeting I was not aware of that. Pardon me, I seem to think I said prior to this meeting. Prior to the first meeting I was not aware of that.

HEARING OFFICER: You mean meeting or hearing?

THE WITNESS: The hearing here. I wasn't aware of it.

Q. (By Mr. Laracy) You were not aware of the top rate before last Friday's hearing; is that right?

A. I think it was. Was it last Friday?

Q. Yes.

A. Right.

Q. Before last Friday were you aware of the fact the expeditors top rate was also $219?

[243] A. No, I was not. I was shocked.

Q. Were you aware of the fact that the Senior Buyers actual top rate was $271?

MR. WINCH: Now, again I object, if the Hearing Officer please, on the grounds I cannot see the relevancy of this line of questioning to this investigation.

HEARING OFFICER: Well, not only that, Mr. Laracy, I think he already answered that question.

THE WITNESS: I was not aware of any of the rates.

HEARING OFFICER: So, I will sustain your objection. I think you already asked him if he was aware of the various price ranges . . . I'm sorry, wage ranges?

Q. (By Mr. Laracy) Could you explain to me why a Senior Buyer would have a highter top rate than a cost analyst and yet the cost analyst has higher authority to purchase than the Senior Buyer?

MR. WINCH: I object to that question. I do not think

it is withn the scope of the wtness' knowledge It calls for testimony that he is unable to give.

MR. LARACY: That's all the questions I have.

HEARING OFFICER: All right.

MR. WINCH: I am looking at—

HEARING OFFICER: Excuse me, Mr. Winch. The Reporter would like to take a break for five or ten minutes. Why don't we take five?

[244] MR. WINCH: As a matter of fact, I have just a couple of questions. I can finish up with him and then it will be time for us to have our consultation and resume the case. I have very little to ask.

HEARING OFFICER: Let's do that.

CROSS-EXAMINATION

Q. (By Mr. Winch) One of the questions, I notice that this exhibit No. 6, Employer's Exhibit No. 6 which you had is dated January 1st, 1944?

A. Right.

Q. Okay.

HEARING OFFICER: Which exhibit is this, Mr. Winch?

MR. WINCH: Exhibit No. 6. I don't think that was what I was interested in. I was interested in the last one.

Q. (By Mr. Winch) Reference was made in your testimony to Class 1 Buyers.

A. According to that job description.

Q. Is it in this job description? This is dated January 1st, 1944. My question to you is whether you have ever known of there being any Class 1 Buyer during the time that you were at the plant?

A. Mr. Seitz—I am trying to answer this to the best of my ability. But in Mr. Seitz' testimony he made mention that procurement functions have changed drastically over the years.

[245] Q. My point is really this; isn't it true that a Class 2 Buyer is a higher category in the hierarchy of employment than a Class 1, that everybody is in Class 2 or is a Senior?

A. No, I cannot, because Class 1 might just be the opposite.

MR. LARACY: I object, I don't think there is a Class 1.

THE WITNESS: No, I don't think there is.

MR. WINCH: That was my first question.

HEARING OFFICER: The answer to that is you never heard of a Class 1 Buyer?

THE WITNESS: No, sir. As a matter of fact, I didn't know what I was. I just thought I was a Junior Buyer until this.

Q. (By Mr. Winch) In the early part of your testimony you testified that a high percentage of orders were repetitive. Were you thinking in terms of the helicopter program in which you participated?

A. I was generally speaking—speaking generally, meaning AM parts and MS parts and nuts and bolts, almost everything including the so-called minute man program, that PBPS, outside of the three items Mr. Seitz made mention of were possibly the four that he had the chart on. And this is the—I've got it marked here somewhere. I forget what they are because they are brand new to me. That is the reason I [246] wrote them down. I am not—there is an actuator of some sort, a cable assembly of some sort, and one other item . . . of, a shell.

Q. You are not particularly familiar with the Minute Man program?

A. Yes, sir, I am. I have fourteen or fifteen line items that go into the making of the Minute Man items.

Q. One last question. There is no requirement, is there, that you consult your supervisor in placing orders of less than $5,000?

A. Here again I would have to check the departmental job instructions to be sure that my answer is correct.

HEARING OFFICER: Have you ever?

THE WITNESS: Have I what?

HEARING OFFICER: Have you ever been told that you have to check for purchases under $5,000?

THE WITNESS: Have I ever been told that I have to check with my supervisor?

HEARING OFFICER: Before you make a purchase under $5,000.

THE WITNESS: I am not trying to be funny, but I have been told so much it's hard to remember what I was told and what I was not.

HEARING OFFICER: Do you customarily or ordinarily check purchases under $5,000 with your supervisor?

[247] THE WITNESS: Not if the price holds or if it is better than the previous price, if the price holds or if it is better than the previous price. This again is under a $5,000 package.

Q. (By Mr. Winch) In other words, you do not feel that you are required to submit all of your under $5,000 orders to your supervisor?

A. I think this is the reason for my success, the fact that I take it upon myself to check with the supervisor. My record will speak for the—will back up this, that I go to extremes to make sure I get the best possible deal for the company.

Q. You prefer to check with the supervisor although you are not required to; isn't that true?

A. I prefer to check with my supervisor, yes. I do prefer to check with my supervisor.

Q. It is for that reason that you consult him rather than any requirement that you are aware of?

A. I see—here again I would have to check my departmental job instructions to find out whether or not this is a requirement or not a requirement. But somewhere I seem to think that regardless of the package sometimes you have to. There are spot checks or some such thing. I forget. But I have to check to make sure my answer is correct.

HEARING OFFICER: If your departmental job instructions [248] state that you do not have to—let me rephrase that. If your departmental job instruction said that you did not have to check with your supervisor before making purchases of $5,000, if they did not—

THE WITNESS: If they do not?

HEARING OFFICER: If the instructions say that you do not have to check are you aware of ever being told anything that would in any way change those instructions?

Have you ever been told to disregard departmental job instructions and check before you make purchases of $5,000 or less?

THE WITNESS: To disregard instructions?

HEARING OFFICER: Right.

THE WITNESS: I have never been told to disregard instructions to the best of my knowledge.

MR. WINCH: That's all.

REDIRECT EXAMINATION

Q. (By Mr. Winch) To your knowledge do other buyers check with their supervisors on occasions on purchases under $5,000?

A. I can only speak for myself.

Q. On talking to your supervisor then on some of these purchases under $5,000 has the supervisor ever told you look, you don't have to check with me on these items?

A. He may have. I don't remember.

[249] MR. LARACY: That's all I have.

MR. WINCH: No further questions. I hope we haven't tired the Reporter.

HEARING OFFICER: Off the record.

(Discussion off the record)

HEARING OFFICER: Back on the record.

The Witness may step down.

(Witness excused)

HEARING OFFICER: We will now take a five-minute recess.

MR. WINCH: You said five minutes?

HEARING OFFICER: Yes.

MR. WINCH: Give us a little more, about ten.

HEARING OFFICER: All right.

(Short recess taken)

HEARING OFFICER: On the record.

Mr. Winch.

MR. WINCH: I will recall Mr. Cleveland.

Whereupon,

HARRY W. CLEVELAND

was recalled as a witness by and on behalf of the Employer and, having previously been duly sworn, was examined and testified as follows:

HEARING OFFICER: You are still under oath, sir.

DIRECT EXAMINATION

Q. (By Mr. Winch) Mr. Cleveland, I refer you to Petitioner's [250] Exhibit No. 14, consisting of four sheets which appear to be a combination purchase requisition, purchase order, and receiving report. And I ask you to explain why those were used.

A. The Exhibit P 14 illustrates a simplified purchase requisition/purchase order form. And it is specifically designed as a work simplification means. As noted on here, the purchases are generally of a low magnitude. For example, Page 1 of this particular exhibit is for $2.50, Page 2 is for $3.60, Page 3 is for $12.30, Page 4 is for $1.21.

As I indicated, it is a work simplification method in which the requisitioner provides some of the pertinent information as to what he wants to buy. He recommends or suggests as indicated in these various exhibits the possible source for these particular commodities. And in all instances the buyer commits the order to a vendor of his own selection. On this particular exhibit the buyer has committed other than the sources as recommended.

HEARING OFFICER: Excuse me. Referring to Page 1 for example, the suggestion—the suggested source on that was Starett?

THE WITNESS: That is correct.

HEARING OFFICER: And was Cramer-Case the company with which this order was placed?

THE WITNESS: That is correct?

[251] HEARING OFFICER: All right.

Q. (By Mr. Winch) How extensively is the form used in terms of dollars?

A. Generally on all relevant and significantly low-priced items where two things are paramount, one is we need the thing in a hurry, that's number one. Number

two, the price is relatively inexpensive as indicated on these particular exhibits.

Q. When you say small price on this or insignificant price, can you give us some idea as to the actual dollar limitations you might be guided by?

A. I would say the preponderance of items fall within the under $100 sort of category, although in some instances we have used this form to expedite the placement of material up to about $250.

HEARING OFFICER: Before we leave this document, sir, let's go on to Page 2. Jergens was the suggested vendor?

THE WITNESS: Yes, sir.

HEARING OFFICER: Is the Eden Industrial Sales Company, is that a different vendor from Jergens?

THE WITNESS: Yes, it is. This vendor is different from Jergens, although I want to qualify it, they are the distributor.

HEARING OFFICER: Who is, Eden?

THE WITNESS: Right.

[252] HEARING OFFICER: How about Page 3, Ace Bushing?

THE WITNESS: Ace Bushing, they are the manufacturer of the item as called out. Godfrey & Cercone is the distributor. I might add—

HEARING OFFICER: Would this be a different vendor than?

THE WITNESS: Yes, sir.

HEARING OFFICER: In other words, you could either purchase this right from Ace Bushing but you chose to go to Godfrey & Cercone?

THE WITNESS: That's right, for two reasons obviously? The availability is much greater normally through a distributor, and, secondly, there is more than one distributor for Ace Bushing. What this does not show is whether or not there was any particular research on the part of the buyer to make sure that he met the requirement date. In this case I am saying the date or requirements are more paramount than the particular price.

HEARING OFFICER: Would this decision for example to go to Cramer-Case instead of Starrett, would that determination be made by the buyer?

THE WITNESS: Yes. In those instances I believe that is the buyer's handwriting.

HEARING OFFICER: Would he have to go back to the source of this document to obtain permission to change [253] vendors?

THE WITNESS: No, sir.

HEARING OFFICER: All right.

Q. (By Mr. Winch) I now show you Petitioner's Exhibit 12 and 13. My recollection is that Mr. Miranda testified as to this that Exhibit 12 was a requisition and Exhibit 13 a purchase order and that there was no substantial change. I ask you to examine them and tell the Hearing Officer whether there were changes made and if so, what they were?

A. This is Exhibits P 12 and P 13, P 12 is being the purchase requisition. It spells out what the manufacturing department requires. It suggests incidentally the particular source, primarily because this particular source or this particular item is a proprietary item of Hamilton Standard. There has been a lot of spade work done prior to this date for the preparation of this purchase requisition.

As indicated by the price it is a major expenditure. Prior to the preparation of any purchase requisition for a major expenditure we have to have a Major Expenditure Requirement filled out. This requires top management's approval.

HEARING OFFICER: The cost of this is $120,000?

THE WITNESS: If you add up all of the items on the purchase requisition—I took the liberty to total it. It comes out to $126,880.

[254] As I indicated, there was a lot of spade work done prior to the preparation of this particular purchase requisition. And you notice in the upper right-hand corner where it says "requirement Reference Number", that is the MER or so-called Major Expenditure Requirement or Request, I'm sorry. That serial number is 69106.

HEARING OFFICER: Who would make up the original request and to whom would it be submitted for approval? In other words, would—

THE WITNESS: That MER, I don't think there is any uniform policy as to who makes up the MER. The MER in this particular instance would more than likely be generated by management, manufacturing engineering, the MER. They are the ones that are saying that we want a particular item to do a particular job. But this MER before it is even acted upon requires management's approval, its top management approval.

Now, in continuing the flow of the purchase requisition on down to the procurement department, it is very obvious and somewhat exceptional that a requisition is this well defined. The only reason I am saying this is because generally the spade work or the effort is done subsequent to the time we receive a requisition on this type or on some purchases. On the requisition, when it hits the buyer that particular procurement is no stranger to him. He has [255] actually participated in the obtaining of the necessary quotations and the necessary information from the source, from Hamilton Standard.

HEARING OFFICER: The buyer would obtain this information in order that management could make that decision as to whether or not they should approve the MER; is that correct?

THE WITNESS: Yes. The very significant part that I see in coordinating the PR with the purchase order—

Q. (By Mr. Winch) When you say "PR", that is?

A. Purchase Requisition. When I correlate the purchase requisition with the purchase order I notice that the buyer exercising his management prerogative has decided rather than paying $126,880 for this, he has negotiated with the source for a $120,000 for the same items plus he has added another item to it. He added Item No. 9 which does not appear in the purchase requisition. So, in this particular case there is approximately over $7,000 worth of savings.

It is at this time that I guess I will have to say that our management prerogative that we exercise coupled with the buyer's objective program, we realize hundreds of

thousands of dollars of savings through this method of saving.

HEARING OFFICER: You said an item has been added to the purchase order. You said that was the viewing scope?

THE WITNESS: Yes, sir.

[256] HEARING OFFICER: Referring back to the purchase requisition, does that not call for a viewing scope also on Page 2? It says: "The viewing scope shall be the same power, style . . ."

THE WITNESS: Page 2?

HEARING OFFICER: Of the PR, Purchase Requisition.

THE WITNESS: Page 3?

HEARING OFFICER: Yes.

THE WITNESS: It does not list it as a line item. If you look at Page 2 it goes only to eight items. That's the eight items that they price.

HEARING OFFICER: Yes.

THE WITNESS: On Page 3 they say "Viewing Scope" but they do not price it. What I am saying is it is related now that we have priced it. Inadvertantly I would expect it was left off of the PR.

HEARING OFFICER: You mean inadvertantly the price was left off?

THE WITNESS: Inadvertantly calling this out and —as a line item and, yes, inadvertantly leaving off the price.

HEARING OFFICER: The purchase requisition did request the viewing scope?

THE WITNESS: It said the viewing scope shall be the same power, but generally the way we operate from this particular thing is if there is a line item to be received [257] the receiving department—if there is an item to be received the receiving department can count this thing. It is a matter of counting. We have to separate each item that is being received as a line item. So, there will be nine items received in this particular purchase, not eight.

HEARING OFFICER: Also in the—am I interrupting your questions?

MR. WINCH: No, you are not.

HEARING OFFICER: Also on the purchase requisition under the heading or under that paragraph there then about the viewing scope the last sentence reads: "This is in accordance with commitment made by Mr. Olaf Olson of Hamilton Standard."

THE WITNESS: Right.

HEARING OFFICER: To whom would Mr. Olson have made that commitment?

THE WITNESS: I don't know. This is the danger of often times people other than procurement contacting vendors. This Olson may not be a bonafide representative of Hamilton Standard. We in procurement know who can commit the vendor and who cannot. So, it's just as critical for us to make sure of the source we are talking to to make sure we are talking to a responsible person as opposed to someone that does not have these prerogatives as a firm's supplier.

HEARING OFFICER: Do you know if Mr. Olson made this [258] commitment to someone other than a buyer?

THE WITNESS: I don't know.

HEARING OFFICER: Okay. I have no further questions.

MR. WINCH: Now, Mr. Hearing Officer, I will hand you four separate documents and ask you to mark them for identification.

Number 1 shows as a vendor Swift Glass Division. Mark that, please.

HEARING OFFICER: That will be Employer's Exhibit No. 13.

(The document above-referred to was marked Employer's Exhibit No. 13 for identification)

MR. WINCH: Exhibit 14 for identification is a Cost Reduction Report with the vendor being Skinner Precision. Mark that, please.

(The document above-referred to was marked Employer's Exhibit No. 14 for identification)

MR. WINCH: I hand you a Cost Reduction Report in which the vendor is Avdel, Incorporated. I ask you to mark that for identification.

(The document above-referred to was marked Employer's Exhibit No. 15 for identification)

MR. WINCH: And then this Cost Reduction Report, the vendor being Honeycomb Products Co. I ask you to mark that for identification.

[259] (The document above-referred to was marked Employer's Exhibit No. 16 for identification)

Q. (By Mr. Winch) I ask for your comments in reference to Exhibits 13, 14, 15 and 16 in connection with testimony that the buyers could not change the vendor recommended by Local 1286?

A. Exhibits 13, 14, 15 and 16 illustrate cost reduction reports as generated by the buyers. The buyers do this on their own initiative. It is part of the job objective plan that they have. It is part of their responsibility I feel as agents for the company to challenge requisitions as received by any originator.

The first exhibit, Exhibit No. 13, discusses a procurement received—a purchase requisition 043063 to purchase 400 pieces of part number 12P0564446 vapor shields from Hamilton Standard, the same particular manufacturer that makes the electron beam welder. The buyer after reviewing the requisition as generated I believe by the 1286 department challenged it. He contacted the electron beam welding supervisor to gather more information so he could obtain a possible alternate source. He got the information of an alternate source, coordinated efforts with the welding supervisor, who concurred with the particular recommendation of the buyer.

[260] The order was placed with someone other than the requisition stated or recommended it be placed with. The result in savings on this particular procurement was $1,070.

Exhibit 14 discusses that procurement received—a purchase requisition specifying a particular item from General Electric. The buyers initial contact with General Electric was not to his satisfaction. He challenged the particular increase that General Electric was demanding. He contacted the program manager and, as he indicated, in a concerted effort he was able to determine an

alternate source. He got concurrence, placed the order with the alternate source and saved himself on this particular procurement $33.

Exhibit 15 again was generated in this particular case by a Class 2 Buyer for an item that originally was called out on the purchase requisition as a sole source. It happens to be with the helicopter program. They called out in this particular case "Buy from Hartwell". The buyer, as he writes up in his report, as a result of the buyer's persistence and encouragement to Avdel to remain available and to obtain qualifications as an alternate source, he was successful in changing that particular requisition from a "Buy from Hartwell" to a "Buy from Avdel". He saved in this particular procurement $6,123.

[261] Exhibit 16—

Q. Employer's Exhibit No. 16.

A. I'm sorry. Employer's Exhibit No. 16 also called out a Bell Helicopter Program Requirement, which again appears to be restrictive if you look at the purchase requisition. The buyer through his contact with other similar sources in the field encouraged "Honeycomb Products" to submit a bid as opposed to "Hexel Corporation" that was called out on the purchase requisition. The buyer was able to influence not only the Bell Program Management, Bell Aerospace's Program Management, he was also successful in getting Bell Helicopter to change their particular drawings to call this source out as an acceptable source.

I don't know what the collateral savings would be if you were to look at the future savings for both Bell Helicopter and Bell Aerospace, but on this particular requisition he saved $820.

HEARING OFFICER: Who prepares these reports, Mr. Cleveland?

THE WITNESS: The buyer.

HEARING OFFICER: The individual buyer as denoted up here?

THE WITNESS: Right.

HEARING OFFICER: By "up here"—

THE WITNESS: In the upper right-hand corner.

[262] HEARING OFFICER: Right, thank you.

Now, do the buyers act on their own initiative in trying to obtain the savings or do they have to first obtain clearance from the supervisor before they can try to develop and alternate source?

THE WITNESS: Well, as I testified earlier, we have what we referred to as a job objective program, which we sit down and talk to the buyers as to what he might contribute to the company, what efforts would he be pointing to. The buyer I would say, being the most cognizant, is most familiar with the places to go for these savings. The buyer through his contact with these sources or vendors, who obviously are trying to—those that are not being used as far as the items we are purchasing, they are always trying to make their product more attractive than the ones we are buying from. So, the buyer has a wealth of contacts.

I guess, related to your question, the buyer is the one that services these vendors. He is the one that generates all the leg work, all the details that go into this.

He then obviously I would think, being encouraged with his results, would want to make sure the supervisor was aware of his alertness.

HEARING OFFICER: right. But I think we have already gone through this in prior testimony, under what circumstances the buyer would have to check with the supervisor before he [263] changes vendors or anything like that. My question to you is, in the early stages of, you know, when he gets the idea he can save some money, the buyer is free or is the buyer free to begin at least the preliminary work on his own without checking with the supervisor?

THE WITNESS: The answer is yes. He is the initiator of it.

HEARING OFFICER: I have no further questions.

Q. (By Mr. Winch) And does this happen in many cases?

A. Well, again, I repeat that this is our method of generating hundreds of thousands of dollars of cost savings on a yearly basis. As a matter of fact, it reaches, as we reported, into several million dollars, not necessarily all by this method. We have two methods. One

is alternate sources and the other is just negotiations with a strictly supplier or customer directed source change, that is a supplier to customer directive source.

MR. WINCH: I offer Exhibits 13, 14, 15 and 16 in evidence.

MR. LARACY: I have a couple of questions.

HEARING OFFICER: You are free to question him on cross-examination. Do you have any objections?

MR. LARACY: I have no objections.

HEARING OFFICER: Employer's Exhibits 13, 14, 15 and 16 are received in evidence.

[264] (The documents above-referred to heretofore marked Employer's Exhibits 13, 14, 15 and 16, were received in evidence)

Q. (By Mr. Winch) I show you, Mr. Cleveland, Petitioner's Exhibit No. 17 in which the suggested source, coming from Local 1286 was Frontier Bronze Corporation and ask you to comment on that..

A. Exhibit P 17 is a purchase requisition generated by 1286 and also a purchase order as prepared by procurement. The purchase requisition sets forth some castings and it recommends the source Frontier Bronze. It is also related to a previous procurement. We in procurement accept this as just for reference purposes only.

The part that is probably more factual than anything in this particular item is that this also is a Bell Helicopter part. If we went back to the early phase of the helicopter program we would find that a source designated as Texas Bronze was called out. Again through the initiativeness of the buyer he came up with a second source. That source was a local source. It was a source that offered a somewhat relatively insignificant but a more attractive savings. That particular source happened to be Frontier Bronze.

If I look back in my files I would find the buyer put a cost savings report through on this particular one and said to buy from Frontier Bronze rather than Texas [265] Bronze. This took some doing on our part to make sure that we did get permission from the various functional departments at both Bell Aerospace and Bell

Helicopter to buy these particular castings from Frontier Bronze. I guess this particular exhibit sort of reflects, even though it doesn't appear to on these orders, reflects that the buyer did indeed set up Frontier Bronze.

MR. WINCH: Now, Mr. Hearing Reporter, will you please mark for identification this document entitled "Purchase Requisition/Purchase Order/ Receiving Report." This purchase requisition I believe is directed to Rocket Dyne.

(The document above-referred to, was marked Employer's Exhibit No. 17 for identification)

HEARING OFFICER: Off the record.

(Discussion off the record)

HEARING OFFICER: Okay, on the record.

MR. WINCH: I now hand you a purchase order directed to North American Rockwell Corporation, Rocket Dyne Division and ask you to mark that for identification.

(The document above-referred to was marked Employer's Exhibit 18 for identification)

Q. (By Mr. Winch) I show you Employer's Exhibit No. 17 and 18 and ask you first whether they pertain to the same procurement?

A. Employer's Exhibit 17 and Employer's Exhibit 18 do [266] pertain to the same procurement.

Q. And will you comment on the changes that have taken place between 17 and 18 and who initiated them, please?

A. Employer's 17 illustrates a purchase requisition that discusses in brief the item or the authority as granted by program management.

HEARING OFFICER: You said it "illustrates"? Is it an actual purchase requisition?

THE WITNESS: Yes, sir.

HEARING OFFICER: It is an actual one?

THE WITNESS: Yes, sir. It provides to procurement the information that is necessary for the buyer to generate a commitment with a source.

Q. (By Mr. Winch) Now you are talking about Exhibit 17, the purchase requisition?

A. Yes, sir.

Q. Right.

A. Exhibit 18 depicts the amount of managerial judgment and initiativeness that the buyer now has to create in order to enter into a definitive purchase agreement with a supplier. I can relate the size by the number of pages. If I were to look at Exhibit No. 17 it has nine pages. The purchase order with related work statements, purchase orders contracts and terms of conditions is many times that number. Do you [267] want me to count them?

MR. SCHMIDT: No.

THE WITNESS: It's approximately one and a half inches thick.

In explaining this particular procurement a little further it does represent a procurement for five million dollars. The effort that was required to formulate this into a good procurement package was generated by a team concept in which the buyer was the team chairman. In order to make sure that the items that we were buying met all of the requirements it required the assistance of engineering to put together the work statement, program management to make sure that it satisfied the intent of the specification.

MR. WINCH: I offer into evidence, Employer's Exhibit 17 and 18.

HEARING OFFICER: Are there any objections?

MR. LARACY: I object. I think it was over $5,000. We agreed anything over $5,000 is agreed to by higher authority. This was five million I think he said. I think we are getting in here to a missile race.

I have much more evidence this morning that I was going to introduce. I thought I was confining it—would confine it as narrowly as possible because of comments by [268] the Hearing Officer and the lawyer attorney. Now if we are going to get into evidence like this we are going to have to ask for another postponement. I've got here a whole packet of stuff that shows requisitions made up by people in 1286 and passed on to buyers

where the people assigned to them act on what is initiated by the people in 1286.

I would like to know how far we are going to go. If it is going to go too far I will have to ask for another date next week to finish our testimony. I thought the company's case was finished. That was over five mililon dollars. No one buyer did that. It was passed on to several people.

HEARING OFFICER: First of all with respect to your objection as to the admissibility of Employer's Exhibits 17 and 18, I will leave it to the decision writer and the Regional Director to determine whether or not they are relevant to the points at hand right now. But I am also inclined to accept them, receive them into evidence in that they are examples of what has been testified to I believe as to how a purchase requisition, you know, is handled and how it becomes a purchase order for these large purchases.

I think it is pertinent not only perhaps to what Mr. Cleveland is testifying to now but also in our determination as to what are the job duties of a buyer, which would actually [269] testified to—were actually testified to last week.

On that basis I am going to overrule your objection and receive Employer's Exhibits 17 and 18 into evidence.

(The documents above-referred to, heretofore marked Employer's Exhibits 17 and 18, were received into evidence)

HEARING OFFICER: I would like to go off the record for a moment at this point.

(Discussion off the record)

HEARING OFFICER: Back on the record.

MR. WINCH: I am now approaching a slightly different point. An attempt has been made by the Petitioner to belittle the buyer to show they are not true managerial employees. I have some correspondence which I wish to offer in evidence and have Mr. Cleveland explain to prove the plane upon which the buyers act.

With that preliminary I ask you, Mr. Hearing Reporter, to mark this for identification.

(The document above-referred to was marked Employer's Exhibit No. 19 for identification)

Q. (By Mr. Winch) I show you a copy of Employer's Exhibit No. 19 and ask you to explain by whom it was written and to whom it was written and on what subject.

A. Exhibit 19 is an inter-office memorandum dated 22nd of October, 1969, prepared and signed by Mr. James [270] Burgart, a Class 2 Buyer. It is addressed to Mr. J. F. Gill, Vice-President of Product Assurance. The general subject is Zero's Defects Program.

The buyer as indicated in there was trying to encourage and promote as a supplier what we refer to as a Zero Defects Program. What it is is an employee motivation program in which he is motivated to produce quality hardware. In this particular case the buyer requested the services through Mr. Gill of a specialist in his department that could assist in setting up such a program.

MR. WINCH: I offer Employer's Exhibit No. 19 into evidence.

HEARING OFFICER: You are offering that in evidence, Mr. Winch?

MR. WINCH: Yes, please.

HEARING OFFICER: Do you have any objection, Mr. Laracy?

MR. LARACY: No objection.

HEARING OFFICER: Employer's Exhibit No. 19 is received into evidence.

(The document above-referred to, heretofore marked Employer's Exhibit No. 19, was received into evidence)

HEARING OFFICER: Mr. Cleveland, did the buyer, Mr. Burgart in this case take it upon himself to contact the [271] vendor and initiate and start this kind of a program?

THE WITNESS: This is another objective sort of effort which the buyer initiated in this particular instance, yes.

HEARING OFFICER: Was this an attempt to help the vendor reduce his operating cost?

THE WITNESS: The reason for this particular letter is that we were having problems with the supplier as far as his quality was concerned. We felt the quality was at the workmen level and that the workmen were not trained or instructed as well as we though they might be by better supervision.

HEARING OFFICER: Did someone in management at Bell Aerospace Company instruct Mr. Burgart to undertake a program of helping the vendor improve the quality?

THE WITNESS: Not with DK, not with that source.

HEARING OFFICER: So, then Mr. Burgart undertook this on his own without checking with any supervisor?

THE WITNESS: Yes, sir.

HEARING OFFICER: All right.

MR. WINCH: Will you mark for identification as TWX, the sender being K. W. Knoll, buyer, to Mr. Andy Tierney, a copy of Mr. H. F. Eckhardt, President, Pyronetics, Incorporated. I ask you to mark that for identification.

(The document above-referred to, was marked Employer's Exhibit 20 for identification)

[272] MR. WINCH: And I also ask you to mark for identification a letter written by the President of Pyronetics, Incorporated to Bell Aerospace Company, Attention Mr. K. W. Knoll, Buyer, dated the 21st of February, 1970. I ask that be marked for identification.

(The document above-referred to was marked Employer's Exhibit No. 21 for identification)

MR. LARACY: Is this two parts to E 20?

MR. SCHMIT: One is 20 and the other is 21.

HEARING OFFICER: The TWX is Employer's Exhibit No. 20 and the letter dated 2-21-70, 21st of February, 1970 is Employer's Exhibit No. 21.

Q. (By Mr. Winch) I now ask for your comments on that. In line with your comments I want you to explain what the company is trying to show.

A. What we are trying to illustrate here is the managerial responsibility that the buyer has in contacting a supplier and also the image that he creates and the attention he demands from the manager of the—from the management of the supplier. In the eyes of the supplier the buyer is management. That is why he directed the letter to his attention. This is really the purpose.

MR. LARACY: I object to that. I don't think we know how the vendor reacts to the buyer. He is speaking for the vendor there. I don't think he can.

[273] HEARING OFFICER: I will allow this, but in the future try to avoid conclusions in your answers.

THE WITNESS: Can I qualify this then?

HEARING OFFICER: I think it is your testimony that the letter was addressed to Mr. Knoll a buyer?

THE WITNESS: Yes, sir, signed by the President.

HEARING OFFICER: Signed by the President of the Company?

THE WITNESS: Yes, sir.

MR. WINCH: I offer Employer's Exhibit 20 and 21 in evidence.

HEARING OFFICER: Are there any objections, Mr. Laracy?

MR. LARACY: No.

HEARING OFFICER: Employer's Exhibits 20 and 21 are received into evidence.

(The documents above-referred to, heretofore marked Employer's Exhibits 20 and 21, were received into evidence)

MR. WINCH: Now I ask you, Mr. Hearing Reporter, to mark for identification a document entitled Revised Cost Proposal for RS-14 Axial Engine Production Follow-on, Bell RFP GJM:70:05:075.

(The document above-referred to, was marked Employer's Exhibit No. 22 for identification)

MR. WINCH: I do not have extra copies of that document. [274] I do have copies of the letter at the beginning of the document addressed to a Buyer of Bell

Aerospace Company, George A. Morris from North American Rockwell Corporation, Rocket Dyne Division.

HEARING OFFICER: Mr. Winch, may I just see the book there for a second to write down its title?

MR. WINCH: Yes.

HEARING OFFICER: All right.

Q. (By Mr. Winch) Now, I show you Employer's Exhibit No. 22 and ask you first if this has anything to do with the Minute Man Program that we have previously taken testimony about?

A. Employer's Exhibit No. 22 is applicable to the Minute Man Program.

Q. And your comments, please, Mr. Cleveland.

A. My comments regarding this particular exhibit reflects the management responsibilities that we invest in the buyers. The buyer prepares what we refer to as a RFP, which means, Request For Proposal. He generates this particular statement or request for proposal, forwards it to the supplier, who in turn responds to the request.

Again, this particular procurement was directed to Rocket Dyne. It was answered in detail by Mr. C.W. Guy, who is Executive Vice-President, and it was addressed to Mr. George J. Morris, Procurement Department.

[275] HEARING OFFICER: Is he a buyer?

THE WITNESS: Yes.

HEARING OFFICER: Senior Buyer?

THE WITNESS: Mr. Morris is a Senior Buyer.

HEARING OFFICER: What is the document specifically, Mr. Cleveland?

THE WITNESS: The document is now in response to our request for proposal. It represents now the supplier's response which includes several phases. It includes the cost phase as well as the technical phase.

HEARING OFFICER: In other words, is it his bid in effect, the vendor's bid on the job with various specifications?

THE WITNESS: Yes, it is.

MR. WINCH: I offer Employer's Exhibit No. 22 into evidence.

HEARING OFFICER: Any objection, Mr. Laracy?
MR. LARACY: Could I see that? I haven't seen it.
MR. WINCH: Yes.
MR. LARACY: How much money was involved in this proposal?
THE WITNESS: This again was a multi-million procurement.
MR. LARACY: I see. Here again, Mr. Hearing Officer, [276] we are getting into multi-million dollar proposals where many people are involved. We never disputed this. When you get into multi-million dollar proposals there are going to be dozens of members involved from the President to Board Members. I object.
MR. WINCH: Mr. Hearing Officer, Counsel has brought in the little cases with attempts to belittle the management functions of the managerial employees. We are trying to prove to you and to the Board, to the Regional Director, if you please, that there are very important management functions being exercised by these buyers.
MR. LARACY: The Employer has admitted and we have not denied that on anything above $5,000 other people become involved, quality, analyst, supervisors, people from quality, people from engineering. We do not deny this. He is not alone on anything over $5,000. He is just a part of a team.
HEARING OFFICER: I am going to overrule your objection, Mr. Laracy, in that I feel that the document does tend to show the scope of the buyer's functions. So, I will receive Employer's Exhibits No. 22 into evidence.

(The document above-referred to, heretofore marked Employer's Exhibit No. 22, was received into evidence)

HEARING OFFICER: After the buyer receives that document, Mr. Cleveland, what does he do with it?
THE WITNESS: He then analyzes it.
[277] HEARING OFFICER: He does that himself?
THE WITNESS: He does analyze it and he enlists the services of the other specialist in the various departments.

HEARING OFFICER: "Other specialist", by that, you mean the people on the team that we discussed?

THE WITNESS: Yes.

HEARING OFFICER: He would do it on each bid that he receives from the various vendors?

THE WITNESS: Yes.

HEARING OFFICER: Then obviously the selection of the best bid is a team effort thing?

THE WITNESS: Yes. Only this is not applicable in this particular instance. This source that we have, the exhibit we are referring to is a customer directed source.

HEARING OFFICER: What does that mean?

THE WITNESS: This means that the only source that we gan go to on this particular requirement is Rocket Dyne.

HEARING OFFICER: They are the only ones that can make that?

THE WITNESS: Right. This is why it is so important that we make sure that a proper analysis of proposal—what we call a "Cost and Price Analysis" takes place. There are two types of procurement. One we call "Non-Competitive" and the other is "Competitive".

MR. LARACY: He does contact other employees when he [278] analyzes that proposal?

THE WITNESS: Yes, sir.

HEARING OFFICER: Off the record.

(Discussion off the record)

HEARING OFFICER: On the record.

MR. WINCH: The last exhibit I will offer on this point is a TWX sent by George J. Morris, a Buyer, to North American Rockwell Corporation, Rocket Dyne Division, which I ask you to mark for identification.

(The document above-referred to was marked Employer's Exhibit No. 23 for identification)

Q. (By Mr. Winch) Mr. Cleveland, will you refer to Employer's Exhibit No. 23 for identification and explain the significance of it?

A. Employer's Exhibit No. 23 is a TWX dated 9-1-70. It represents advance purchase authorization to a—to

North American Rockwell permitting them to get started on a procurement in order to guarantee that delivery will be commensurate with our in-house requirements.

Q. Does this increase the amount of the commitment?

A. Yes, sir. It increases it from $180,000 to $528,000. This particular document is generated by the buyer.

MR. WINCH: I offer the exhibit into evidence.

HEARING OFFICER: Mr. Laracy, do you have any objection?

[279] MR. LARACY: No objection.

HEARING OFFICER: Employer's Exhibit No. 23 is received into evidence.

(The document above-referred to, heretofore marked Employer's Exhibit No. 23, was received into evidence)

MR. LARACY: Who had to give final approval to this document?

HEARING OFFICER: Excuse me. Are you finished?

MR. WINCH: Yes, I am finished with the witness.

HEARING OFFICER: Your witness, Mr. Laracy.

CROSS-EXAMINATION

Q. (By Mr. Laracy) Employer's Exhibit E 23, Mr. Cleveland, who had to give final approval to this document?

A. That particular document went up to just the level of the Director of Procurement.

Q. He gave final approval?

A. Yes, sir.

Q. Exhibit E 19, do you have that, Mr. Cleveland?

HEARING OFFICER: This is the inter-office memo?

MR. LARACY: Yes.

Q. (By Mr. Laracy) You stated the buyer sent this letter to the Vice-President, Mr. Gill, because of some problems with quality. How did the buyer know there were some problems with quality?

[280] A. Well, as we are trying to point out, the buyer is the main contact with the supplier. He is the eyes and ears, if you will, of Bell Aerospace. He understands

the contract in its entirety regardless of what phase it might be.

I guess in direct answer to your question, when a part comes in and it is rejected, the buyer obviously has to pass judgment on it as far as determining the claim that might be imposed on the supplier.

Q. He was properly notified by Quality Department?

A. No. I would say he was notified when the parts were not being shipped consistent with our schedule. The buyer maintains a constant daily dialogue with the supplier. He does not just get into the act when the material is received.

This would be too late and obviously very critical to our program.

Q. E 13, 14, 15 and 16, you gave us examples of Cost Reduction Reports submitted by buyers. In the lower right-hand corner are signatures. Who are these signed by?

A. As indicated there, the first signature is the supervisor, Mr. J. P. Muni. The second signature is the validator. That is Mr. R.J. Victor. The third signature is a manager, and that is Mr. R.A. Folker.

Q. What is Mr. Victor's title besides validator?

A. He is the Price Analyst in part. He gets varied responsibilities, generally administrative in nature.

[281] Q. And Mr. Folker is?

A. Mr. Folker is Manager of Administration.

Q. This Cost Reduction Report is signed by three supervisors?

A. Yes, for the express purpose—just two supervisors, I'm sorry. Victor is not a supervisor.

Q. Right.

A. We want to make sure if we do say indeed there is a cost reduction, we want to make sure a supervisor concurs that the item is a cost reduction, principally because top management then recognizes and determines whether some of these savings are or are not valid.

Q. You mentioned in relation to Petitioner's Exhibit 12, and 13, that Major Expenditure Request were initiated in the machine and equipment department?

A. I don't believe I indicated that the MER was initiated in the machine and equipment department. I think I said in that particular instance that was probably initiated in the manufacturing engineering department because they are the ones that have the need for that particular equipment.

Q. Who would have initiated it in that department? Would it have been a—

A. I would say since it is a piece of welding equipment that our group supervisor John Biffel would be the one to initiate that. Certainly Mr. Biffel would be the one [282] to set it up as far as modifications.

Q. Are you aware of the fact that the MER or appropriation of MER's are under the Engineering, Machine and Equipment Planning?

A. No, I am not.

Q. That's all.

A. No, I am not.

Q. That's all.

A. Can I qualify that? What type MER's? All types?

Q. Prepares major expenditure requests complete with detailed justifications for manufacturing equipment, investigates major expenditure request for other divisions for similar type equipment.

A. I think I am aware of this being fairly well familiar with the policy that the MER's that are applicable to the manufacturing type equipment could conceivably be generated by the Manufacturing Equipment Department. Those pieces of equipment that are more applicable to engineering in other phases of the company are not generated by the Manufacturing Engineering Equipment Section.

HEARING OFFICER: Do you have any further questions, Mr. Laracy?

MR. LARACY: That's all I have.

HEARING OFFICER: Anything on redirect?

MR. WINCH: No.

[283] HEARING OFFICER: You may step down.

(Witness excused)

HEARING OFFICER: We will take a short recess right now.

(Short recess taken)

HEARING OFFICER: On the record.
MR. WINCH: Mr. Wacks, please.
Whereupon,

PETER J. WACKS

was recalled as a witness by and on behalf of the Employer and, having previously been duly sworn, was examined and testified further as follows:

HEARING OFFICER: Mr. Wacks, you are still under oath.
THE WITNESS: Yes, sir.

DIRECT EXAMINATION

Q. (By Mr. Winch) Mr. Wacks, you have previously testified that you are a Vice-President of Bell Aerospace Division of Textron Inc. When you originally came to work for the predecessor of this company what was the name of the corporation by whom you were employed?
A. Bell Aircraft Corporation.
Q. And did Bell Aircraft Corporation at that time have divisions?
A. We had nine divisions, three of which were in the [284] so-called aircraft business and the other six were in commercial businesses at that particular point.
Q. Did there come a time when Bell Aircraft Corporation was purchased by Textron Inc.?
A. Well, on July 1st, 1960, Textron was interested in getting into the aerospace business. They made a proposition to the old Bell Aircraft Corporation to purchase the company—three companies, three companies of these nine companies of Bell Aircraft Corporation which were in the aircraft or aerospace business, namely the Bell Aircraft Company here in Buffalo, the Bell Helicopter Company down in Ft. Worth Texas, and another company in Burbank, California known as HR & M

Company. These three companies were engaged in the aerospace or aircraft business and Textron wanted to buy those three and it did.

At that point these three became operating companies of the Textron Corporation. The other six companies went their separate way and formed at that time what was known as, and still is today, Bell Inter-Continental. That is on the big board under Bell INT.

We have nothing to do with Textron and my company has nothing to do with those other six companies. As of July 1st, 1960, we in the Buffalo Plant, so-called Bell Aircraft at that time, at that time the name was changed to Bell [285] Aerosystems Company.

Q. May I suggest that at that time a subsidiary was formed by Textron Inc. known as Bell Aerospace Corporation?

A. There was. At the time in connection with these three companies they purchased, they formed a holding company known as Bell Aerospace Corporation, a subsidiary of Textron. Mr. Harvey Gaylord was President of that corporation and to him was to report the three Presidents of the these three companies Textron had purchased.

Mr. Giesel was President of the then Bell Aerosystems Company; Mr. Ducayet in Bell Helicopter was president of that company; Mr. C. Martenson was President of the HR & M Company. These three Presidents of those companies reported to Mr. Gaylord who was President of Bell Aerospace Corporation and Mr. Gaylord reported to Mr. Miller of Textron, who was President of Textron.

Q. And what at that time was the declared policy of Textron Inc. as to the amount of autonomy to be exercised by the three divisions of Bell Aerospace Corporation?

A. That's right, they had a policy or, yes, they had a policy at that time. At that time Textron was a conglomerate and owned about twenty-two different companies. And there their announced policy was each one of those companies was autonomous unto itself.

They owned the Schaffer Pen Company or later acquired [286] it. They owned companies like Corn-Silver

and various companies of that type. The philosophy of Textron was every company they purchased was autonomous unto themselves.

They were responsible for their own individual sales program, the attainment of its sales program, the attainment of so much return on net worth. There were no interlocking operating committees between any of these companies. And for all intent and purposes each one of these companies, which now totals about thirty-three of Textron, each is separate and distinct unto itself. Each one of them has to stand on its own feet as far as the sales picture and profit picture and anything else that goes with running a business.

Q. Now, consider the subject of industrial relations and collective bargaining. What part does Textron take in that?

A. Textron does not really take any part in the negotiation of contracts. They leave it up to the individual divisions. In other words, at Bell Helicopter Company there is a Vice-President of Industrial Relations, a counter-part to me. Other companies have the so-called Director of Industrial Relations or by any other title. The responsibility is centered into some individual in each one of these subsidiary companies or divisions.

[287] Q. I show you Petitioner's Exhibit No. 7, and it is an agreement between Bell Helicopter Company, Division of Bell Aerospace and United Local Office Workers No. 317 UAW which as has been testified by a witness for the Union includes buyers and assistant buyers. Can you explain the circumstances under which the coverage of the contract came to include buyers and assistant buyers?

A. I think—I know I can. In fact, prior to the takeover by Textron I headed up the negotiations of Bell Helicopter as well as Bell Aircraft here in Buffalo. And I have been in negotiations with this particular salarly-hourly unit in Texas. This is a combination of salaried employees and hourly employees. They do include the buyers.

Back at the time this bargaining unit was organized, as I have been told by officials down there, the company

agreed to a consent election which would include not only buyers but Senior Accountants and other salaried personnel.

At the time the Union petitioned for a bargaining unit there was no objection interposed by the company. In fact, the company agreed to include the buyers, the Senior Accountants, and other office personnel. There was no contest whatsoever as there is here today in that particular case.

Q. Now, on January 1st, 1970, there was a further [288] reorganization within the structure of Textron affecting Bell Aerospace Corporation its subsidiary and the Division of Bell Aerospace Corporation. Would you explain that?

A. Well, Mr. Gaylord was about to retire. As a result of that situation Textron decided to eliminate this wholding company the Bell Aerospace Corporation and they did that. As a result of that the three Presidents of these three companies now report to what is known as a group Vice-President. That group Vice-President, who happens to be Mr. Martenson, whom I mentioned before, he reports to Mr. Miller, the President of Textron. And at that particular time Bell Aerospace changed its name again and merely adopted the word "Aerospace" because we felt it was more descriptive of the type of work we were in. And because it did describe the work better we decided to adopt the title Bell Aerospace Company.

Q. I think you misspoke yourself slightly then. I think you meant to say Bell Aerosystems changed its name to Bell Aerospace Company?

A. That's true if I said something else. It was Bell Aerosystems Company changed its name and adopted the Bell Aerospace Company name. Now, since the reorganization on January 1st, 1970, have—

Q. Since the reorganization on January 1st, 1970, have there been any changes in the policy of Textron Inc. as to [289] the autonomy exercised by the Division of Textron Inc. including the policy with respect to labor relations, industrial relations and collective bargaining?

A. None whatsoever. Just for the purpose of explanation I might point out that Textron considers these divisions very autonomous. So much so that recently we had a contract where we were making doors for the helicopter company and the Army suggested to Helicopter that they put these doors our for competitive bids. We had been making these doors as a sole source of supply for the past five years and the bid was put out to various companies.

Cessena Aircraft Company in Wichita came in with a low bid and they got the contract.

Right at the present time we are winding up the door contract. And as far as this new contract is concerned, that is going to Cessena in Wichita. And that just illustrates how Helicopter considers Bell Aerospace Company. It's just like Ford and General Motors. We are two separate companies for all intent and purposes.

MR. WINCH: No further questions.

CROSS-EXAMINATION

Q. (By Hearing Officer) Mr. Wacks, are the labor and industrial relations policy for Helicopter and Aerospace Divisions for Textron determined centrally by someone like Mr. Martenson or are they determined independently?

[290] A. They are determined on a low level. They do not have any industrial relations director at the Textron or corporate level nor at this group vice-president level. They are determined locally by the President of each one of these companies and by the operating division or operating committee of each one of these companies.

Q. Are employees transferred from Bell Aerospace to Bell Helicopter or vice-versa?

A. Not as a general rule. It could be and it does not happen too often where Helicopter may want a good man, let's say in the manufacturing department. They might come to us for a recommendation. We might recommend a good man if it means a promotion for that individual.

They take a look at him and decide whether they want him or not.

Generally that is the only situation where there is a transfer. As a matter of course there is no transfer back and forth based on seniority or anything like that.

Q. At Bell Aerospace are there any company sponsored things such as pension plans or retirement for any employees including executives?

A. Any pension plan?

Q. Right.

A. There is a pension plan, yes. It is the same for all salaried people.

[291] Q. Is this pension plan separate from the one at Bell Helicopter?

A. The salaried plan at Bell Aerospace is separate from the one in Helicopter, yes, sir.

Q. Is that also true for hourly?

A. No, the hourly plan there is a carry-over because of the union implications as far as the hourly plans are concerned. As a result of bargaining negotiations the plans are the same for—generally the same. There are deviations from the two plans. The plans may be different in different respects but the fund is the same. There is one fund. But that is the result of negotiations.

Q. Who administers that fund for the company?

A. Well, we—Helicopter has a separate Board of Administration and we have a Board of Administration. Each Board handles the various retirements and problems that come up under the pension plan for the hourly people at home base. They are handled separately by each one of the separate boards of Administration.

Q. Do you still negotiate for the people at Bell Helicopter?

A. No, I do not.

HEARING OFFICER: I have no further questions. Mr. Laracy?

CROSS-EXAMINATION

Q (By Mr. Laracy) In Local 317 there was a consent [292] election there?

A Yes, there was.

Q The company agreed to a consent election. There was an election and the union won a majority?

A That's right.

Q The Buffalo area I assume there are two UAW locals, 501 and 516. 501 is production and maintenance?

A 501 is production and maintenance and 516 is inspectors, timekeepers, accounting girls and five captains.

Q In Texas there is three—there is 317 which is hourly-salaried?

A 317 I believe is hourly-salaried and 218 is production and maintenance.

Q Do these four locals have the same termination date for their contracts?

A Yes, they do.

Q Did these four locals conduct a strike at the same time in 1969?

A Well, they did. You are talking about the Helicopter Locals?

A Yes.

Q They were in joint negotiations. You are talking about the hourly, maintenance and production people, aren't you?

A There was a strike last year?

[293] That's right. This was the maintenance and production people at Helicopter.

Q Was the strike effective on the same date?

A Yes.

Q What locals were on strike?

A Maintenance and production.

Q What's that? 218?

A I believe that is the hourly bargaining unit.

Q The hourly-salaried were not on strike?

A No. Their negotiations came up later.

Q Local 501 and 516 up here were on strike, right?

A They were on strike.

Q On the same date?

A Well, the termination date of Helicopter and our contract terminated on the same date. But the negotiations were entirely separate. They had different problems down there than we did and different International Representatives down there as disguished from here. It was totally separate. It just happened the termination date of these contracts were the same.

Q Are there the same basic fringe benefits for both contracts for all three locals?

A Generally they are the same. But there are exceptions, you know, some deviations, differences.

Q Does a job in the production and maintenance unit up [294] here, say Local 501, have the same rate for the same job down in Texas?

A Not necessarily.

Q How about the majority of jobs? Over the years the rates have changed?

A There was one time when rates at Helicopter were lower than ours. And as a result of negotiations back in 1960 or 1961 the Helicopter rates went ahead of our rates and for years they were ahead of our rates. In '66—'65—'66, they were quite a bit ahead of us up here, that is, the Helicopter rates were somewhat higher. As a result of negotiations in '66 we entered into an agreement where there would be a catch up with the Helicopter rates over the next three years. So, come 1969 generally the rates were about the same. But they are not all the same and there are differences.

Q Did you for the Bell Systems Corporation in roughly 1966 participate in negotiations down in Texas?

A Not in '66.

Q What year was it?

A I think the last time I was down there if I remember correctly was around '63. And this was—let me explain. That was after the Textron take over, but for two or three different reasons they invited me to come down and head up those. That was on an invitational basis I guess more than [295] anything else.

MR. LARACY: That's all I have.

REDIRECT EXAMINATION

Q (By Mr. Winch) You spoke of the fact that there are occasional transfers from one division here to the other division in Texas. What type of employees would that be?

A Well, as I pointed out there are not occasional transfers. There may be a transfer that comes around this way where Helicopter is looking for a let's say manager or supervisor of some department and they are having a hard time finding him. So, they will request us as well as other companies in the Textron Complex to seek and advise them as to where there is a man that might fill these requirements. And if there is in our department let's say or our company and if it means a promotion for this man we will recommend to Helicopter that he may be taken on, transferred. And if everybody is happy about it, he will be transferred. As I indicated, that happens very, very infrequently.

Q Is there ever any exchange of employees—I think that is a better term—where a man carries seniority from one plant to the other?

A No, no. He would carry probably company seniority for fringe benefit purposes like insurance, vacation, perhaps, that type of thing. But as far as consideration of layoff and all that which might subsequently occur in [296] Helicopter, he would take into Helicopter that date and seniority, the date of transfer seniority.

Q Now—

A Let me finish the thought. I don't know of one single case where any hourly people have been transferred from Bell Aerospace Company to Helicopter in the past ten years I would say or even prior to that time.

Q You have testified that there were strikes in Ft. Worth and at the Wheatfield Plant simultaneously. Were they settled at different times?

A They were settled at different times. The people struck in Helicopter and here the same night. I think it was June 9th—June 8th, midnight, June 8th. But their

strike down there was settled within two weeks. The people went back to work two weeks later. Unfortunately our strike lasted seven weeks, five weeks longer than the Helicopter strike. So, they were settled on different dates. One lasted two weeks, the other strike here at Aerosystems lasted seven weeks.

Q Was there any coordination of the settlement negotiations between Ft. Worth and—

A As far as Company representatives?

Q Yes.

A We exchanged information but they have their problems down there and we had ours here. All we did was bring each [297] other up-to-date as to how negotiations were going or how they were not going.

MR. WINCH: That's all.

RECROSS-EXAMINATION

Q (By Mr. Laracy) I have a couple of more questions. The expiration date for Local 218 and in Texas 501 and 516, was it the same date now for the three locals?

A I think on production, 516, 501 and 201, I think they were the same date.

Q Local 218 in Texas had approximately a two-week, three-week strike?

A Two weeks.

Q And 501 and 506, seven weeks?

A Yes.

Q What was the dispute? What was the difference? Why was one two weeks and the other seven? Was there one main dispute?

A I think so. The issue in the two strikes, well, the issue there was primarily the elimination of the open end cost of living clause. That was not an issue at Bell Helicopter. That was the reason were were out five weeks longer than the people in Helicopter.

One of the primary reasons I think why Helicopter went out, as I understand it, was they were demanding additional sick leave and more money and the younger people [298] wanted it. They were not getting it and they precipitated the strike down there. There were two different issues, two entirely different scenes of activity.

MR. LARACY: That's all.

HEARING OFFICER: You are excused, sir.

(Witness excused)

MR. WINCH: That's all the company has.

MR. LARACY: That's all I have.

HEARING OFFICER: Is there anything further that either of the parties wishes to present at this time?

Mr. Laracy?

MR. LARACY: No.

HEARING OFFICER: Mr. Winch?

MR. WINCH: No.

HEARING OFFICER: Mr. Laracy, in the event that it is found that the buyers are not managerial employees and are employees under the meaning of the Act and if in addition to that it was found that the appropriate unit would also include the estimators, the cost analysts —I don't mean "estimators". I mean expeditors. In other words, a larger unit, in other words, almost all employees in Department 121, would the union still wish to participate if a larger unit were found appropriate?

MR. LARACY: Yes. In fact, if you want I will make [299] an alternate proposal should the Regional Director find buyers are employees but possibly find the buyers themselves are not an appropriate unit. Should he find this I will then offer one or two alternate units that the union would accept and the union would represent.

HEARING OFFICER: Okay, fine.

Off the record.

(Discussion off the record)

HEARING OFFICER: Back on the record.

Do any of the parties desire to file briefs, Mr. Winch?

MR. WINCH: Yes.

HEARING OFFICER: Mr. Laracy?

MR. LARACY: Yes.

HEARING OFFICER: Briefs are due within seven days after the close of this hearing, which will be—

MR. WACKS: There is a holiday in there.

HEARING OFFICER: Right.

MR. WINCH: As a matter of fact, then if the Hearing Officer please, counsels have discussed the subject and are aware it's within the jurisdiction of the Hearing Officer to extend the time to file briefs for another fourteen days, and we join in requesting an additional fourteen days so we will have twenty-one days.

HEARING OFFICER: Would it be possible at all to get [300] them in earlier than that? For example, if I were to grant fourteen days would that be sufficient, instead of twenty-one?

MR. LARACY: It's going to be rough for me. I have another assignment and I would really like the fourteen days.

HEARING OFFICER: You are talking about fourteen days?

MR. WINCH: Fourteen in addition to the seven, yes. That is our request.

HEARING OFFICER: Off the record.

(Discussion off the record)

HEARING OFFICER: On the record.

An extension of time for filing briefs has been granted. Briefs are due on Thursday, September 24th. If there is nothing further, the hearing is closed. Is there anything further?

MR. LARACY: Do you want an alternate position from us on the unit or is that on the record?

HEARING OFFICER: Are you prepared to present that now?

MR. LARACY: When do you want me to present it?

HEARING OFFICER: Why don't you make it now for the record?

MR. LARACY: All right.

HEARING OFFICER: I thought you were going to put that in your brief.

[301] MR. LARACY: I want to get it on the record. The Petitioner requests a unit of buyers as listed in Employer's Exhibit 4. The Petitioner takes the position that the buyers are employees under the Act.

However, should the Regional Director find that the buyers are employees but they form an inappropriate unit, the Petitioner would then extend his unit to include all salaried employees in the purchasing department as mentioned on Exhibit 4. These salaried employees would include the buyers plus the cost analysts plus the salaried expeditors.

HEARING OFFICER: You would exclude the two hourly expeditors?

You would exclude them?

MR. LARACY: That would be our third position. As our third position we would include also the hourly expeditors on the grounds they would eventually become salaried expeditors. So, in other words, the Regional Director here has two alternate positions from the union, one a unit of buyer, should they be declared employees. The additional unit would be buyers plus all salaried employees as mentioned on Exhibit 4, and the third position would be all salaried employees on Exhibit 4 plus the hourly expeditors.

MR. WINCH: In reply to the stating of the union's position, in the first place we do not believe that the [302] additional expanded unit proposed by the union would be appropriate. And the first question that enters my mind is whether the only appropriate unit would be all salaried employees within the company. But I do not know how that could be determined without a further hearing. That is not the issue before the Board. That is not the issue before the Board on this petition.

This petition is for the buyers in the Procurement Department. I do not believe that there can be any other question before the Board without a further petition. So, we object to any expansion to any unit including the buyers whether or not including additional salaried personnel.

MR. LARACY: I have confined my alternate position to the establishment record. I have not gone beyond the record and I think the record speaks for itself.

HEARING OFFICER: Is there anything further?

MR. LARACY: No further comments.

MR. WINCH: Nothing further.

HEARING OFFICER: Fine. The hearing is closed.

(Whereupon, at 5:15 p.m., the hearing in the above-entitled matter closed)

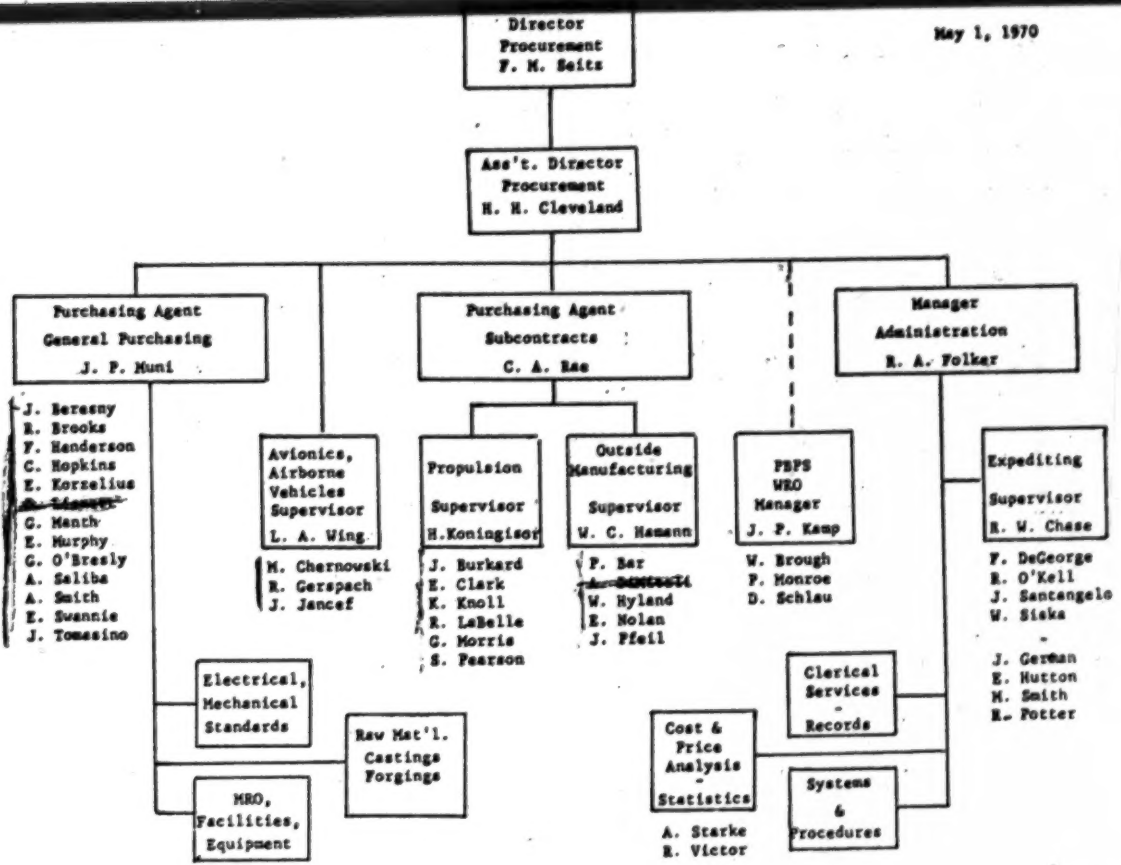
ALPHABETICAL LISTING OF BUYER PERSONNEL IN THE PROCUREMENT DEPARTMENT OF BELL AEROSPACE COMPANY AS OF 7-20-70

Perm. No.	Name	Dept.	Co. Sen.	JC/LG
	BUYER CLASS II			
81178	Bar, P. J.	121	10-23-51	741 A13
99063	Beresney, J. T.	121	03-11-65	741 A13
03430	Burkard, J. R.	121	02-13-67	741 A13
02225	Clark, E.	121	10-12-66	741 A13
~~02014~~	~~Dimiceli, Ara.~~	~~121~~	~~09-20-66~~	~~741 A13~~
72395	Henderson, F. H.	121	04-18-49	741 A13
71080	Nolan, E.	121	08-21-51	741 A13
	BUYER SENIOR			
75845	Brooks, R. F.	121	10-24-66	741 A16
75695	Chernowski, M. P.	121	03-24-69	741 A16
00073	Gerspach, R. A.	121	04-25-66	741 A16
81212	Hopkins, C. E.	121	07-30-62	741 A16
81914	Hyland, W. J.	121	02-12-52	741 A16
02293	Jancef, J. O.	121	10-17-66	741 A16
99323	Knoll, K. W.	121	08-09-65	741 A16
99395	Korzelius, E. G.	121	09-20-65	741 A16
77111	Labelle, R. J.	121	05-06-68	741 A16
95815	Manth, G. E.	121	03-05-57	741 A16
16297	Morris, G. J.	121	02-16-42	741 A16
78797	Murphy, E. G.	121	05-24-51	741 A16
70967	Obresly, G. R.	121	10-03-47	741 A16
98858	Pearson, S. M.	121	05-13-64	741 A16
97691	Pfeil, J. W.	121	05-21-62	741 A16
81286	Saliba, A. G.	121	07-10-61	741 A16
88224	Smith, A. D.	121	03-14-66	741 A16
99482	Swannie, E. R.	121	10-11-65	741 A16
05160	Tomasino, J. A.	121	08-28-67	741 A16

8-25-70
dm

Empl. Exh. No. 3

May 1, 1970



Empl. Exh. No. 4

198

JOB DESCRIPTION

BELL AEROSYSTEMS COMPANY
DIVISION OF BELL AEROSPACE CORPORATION

Form 0571

JOB TITLE	JOB CODE
Buyer, Senior	741-A16

DUTIES:

Under general direction and with considerable latitude for independent action, is responsible for developing sources, negotiating, administering and controling purchasing programs and/or subcontracts involving large dollar volume procurement of major complex electronic, mechanical and electro-mechanical systems, subsystems or components. More specifically: develops sources of supply from engineering specifications and wide knowledge of vendor capabilities; confers with technical, engineering, research and manufacturing personnel to achieve a working knowledge of the assigned item to be purchased and the general functional relationship to the end product or effort; investigates or analyzes surveys or other data on suppliers to determine their capability and reliability; prepares invitations for bids to qualified suppliers involving detailed Company and Government regulations; evaluates bids or proposals and determines or makes effective recommendations on the selection of the supplier; negotiates with supplier on bids and/or subcontracts and administers all matters related thereto during the life of the agreement; makes various reports and analyses as required. Directs others assisting in any of the above as required.

DESIRABLE QUALIFICATIONS:

College graduate with a degree in Business Administration or the equivalent in training and experience. At least six years of successful and progressive experience in buying and related Procurement activities.

Empl. Exh. No. 5

May 17, 1963	JOB REVISED 725-A16

JOB DESCRIPTION

Bell Aerospace Company ..... extron

JOB TITLE	JOB CODE
BUYER, CLASS II	741 - A13

DUTIES:

Under the supervision of the Supervisor of Purchasing or an individual of equal or higher rank, is responsible for finding sub-contractors and vendors to fabricate complex and expensive parts or tools and to place orders for material in such a way that a proper flow of parts with a minimum of shortages will result; on the basis of purchase requisitions, Engineering blueprints, and operation sheets, determines the type of equipment necessary to produce the parts or tools; submits information to a minimum of three vendors, who are properly equipped to perform the work, for quotations; forwards bids to the Estimating Department for approval and issues purchase order to the vendor most satisfactory as to price and delivery date; is often called upon to persuade vendors to produce parts or tools when it will result in many changes in the plant; furnishes vendor with information and suggestions to aid him in facilitating his production; performs liaison between vendor and various departments of the Corporation such as Accounting, Inspection, Tool Design and Engineering; assigns work of placing orders for less complex parts or tools or portions of large orders to Class I Buyers; may serve as a specialist, performing any combination of the above duties.

DESIRABLE QUALIFICATIONS:

College education or its equivalent. Three to five years of progressively successful experience in fabrication methods and buying procedures.

Empl. Exh. No. 6

DATE	JOB REVISED
January 1, 1944	New

BELL AEROSYSTEMS COMPANY

POLICY AND PROCEDURE

NUMBER 14-008
SUPPLEMENT
PAGE 1 OF 4
DATE ISSUED 4/30/62
DATE REVISED 8/8/69

TITLE FINANCIAL COMMITMENTS

I. PURPOSE

To establish financial limitations for those Bell Aerosystems Company officers and other designated Company personnel who are authorized to make financial commitments.

II. SCOPE

A. Financial commitments within the scope of this policy are:

Proposals and contract commitments to sell or perform,
Procurement commitments,
Company sponsored projects,
Employment commitments.

These commitments may be by or with the United States government, any foreign government and any person, firm, or corporation. These commitments include any subcontracts or subordinate contracts relative to any work, property, purchases, sales, contracts, services, or production of any kind carried on or performed for Bell Aerosystems Company.

III. GENERAL

A. The financial limitations for contracts and related instruments and procurement commitments, as set forth below, have been established by Bell Aerospace Corporation for corporate control.

The authorizations herein do not supersede financial limitations, documentation procedures or any other internal controls established by Bell Aerosystems Company Policies and Procedures (BAPP's), Departmental Job Instructions or Executive Orders, where such controls are more restrictive. For example, BAPP 00-052 Negotiation of Contracts, BAPP 20-004 Management Strategy and Review Meetings and Pricing Meeting and Manufacturing DJI 121-304 Procurement Commitments.

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IV. AUTHORIZATION LIMITATIONS

A. Contracts and related instruments, including proposals, termination claims and releases.

IV. AUTHORIZATION LIMITATIONS (continued)

A. (continued)

Contract Managers	Donald E. Argus James F. Corbett Robert E. Gardner John J. Weisbeck	Not more than $10,000.
Director - Contracts Administration	Howard R. Herod	Not more than $1,000,000.
Executive Director - Marketing	John R. Clark, Jr.	
Manager - Cleveland Operations	William J. O'Mara	
Manager - Arizona Operations	Murray Shabsis	
Secretary and Chief Counsel	Joseph E. Conners	Not more than $5,000,000.
Vice President and Manager - Minuteman Program	Lawrence P. Mordaunt	
Vice President - Marketing	Joseph R. Piselli	
Vice President - Western Region	John M. Schweizer, Jr.	
Vice President - New Orleans Operation	William M. Smith	
Vice President - Eastern Region	Edward W. Virgin	
President - Bell Aerospace Corporation	Harvey Gaylord	No Limitations
President - Bell Aerosystems Company	William G. Gisel	
Executive Vice President	Richard M. Hurst	
Vice President - Finance	Norton C. Willcox	

BELL AEROSYSTEMS COMPANY

POLICY AND PROCEDURE

NUMBER 15-008
SUPPLEMENT
PAGE 3 OF 4
DATE ISSUED 4/30/62
DATE REVISED 8/8/69

TITLE

FINANCIAL COMMITMENTS

IV. AUTHORIZATION LIMITATIONS (continued)

B. Procurement Commitments

Procurement Buyers		Not more than $50,000.
Procurement Supervisors	W. C. Hamann J. P. Kamp L. A. Wing	Not more than $100,000.
Purchasing Agent	J. P. Muni	Not more than $500,000.
Assistant Procurement Director Procurement Director	H. H. Cleveland F. M. Seitz	No Limitations

Notes:

1. Procurement commitments to suppliers, contractors or subcontractors are only made when authorized by a properly approved purchase requisition.

2. The procurement document, i.e. Purchase Order, subcontract or other document will be authorized only when the document contains terms and conditions previously or specifically approved for the purpose by the Legal Department.

3. Commitments for consultants services may be authorized only by the Executive Vice President or the President.

C. Company Sponsored Projects

1. Capital Expenditure and major expense commitments are subject to budgetary control and the approval of the Vice President, Finance. For requests of $25,000 or more, approval of the Executive Vice President or the President is required. Reference BAPP 15-006, Major Expenditures.

Form 6403 Rev. 661 Sheet 1

revised

Empl. Exh. No. 7 (2 of 2)

BELL AEROSYSTEMS COMPANY

POLICY AND PROCEDURE

NUMBER 15-003
SUPPLEMENT
PAGE 1 OF 4
DATE ISSUED 4/30/62
DATE REVISED 8/8/69

TITLE

FINANCIAL COMMITMENTS

IV. AUTHORIZATION LIMITATIONS (continued)

C. (continued)

2. Independent Research and Development work authorizations are subject to budgetary control and the approval of the Vice President, Finance or his designee (Budget Director) and the Vice President, Planning.

3. Bid and Proposal work authorizations are subject to budgetary control and the approval of the Director of Marketing Services and the Vice President, Finance, for approval for requests of $10,000 or more. Finance Department approval for lesser amounts may be delegated to the director of Budgets.

4. Requests for funds to initiate or sustain work effort during the period of contract negotiations or formalization require the approval of the Vice President, Marketing and Finance and the Executive Vice President.

D. Employment Commitments are authorized as follows:

1. Requisitions for indirect employees are subject to approval of the responsible Vice President or executive reporting directly to the President and the approval of the Vice President, Finance.

2. Employment offers are made subject to established wage and salary limits. However, salary offers or salary increases to an amount in excess of $15,000 must be approved by the President prior to any discussion or commitment.

3. Company-Union Contracts are subject to approval of the Vice President, Industrial Relations and Chief Legal Counsel.

Form 6483 Rev. 661 (Sheet 1)

BELL AEROSYSTEMS COMPANY

DEPARTMENTAL JOB INSTRUCTION

NUMBER 121-304
SUPPLEMENT
PAGE 1 OF 2
DATE ISSUED 10/10/69
DATE REVISED 11/26/69

DIVISION Manufacturing FACILITY 11
DEPT. Procurement REF. BAPP
TITLE Signatory Approval Commitment Authority Request
TITLE

I. Reference

Bell Aerosystems Company Form No. 1064, Rev. 1069.

II. Purpose

To delineate stratification of signatory authorization requirements.

III. Scope

This pertains to all commitments awarded by Procurement personnel in the normal conduct of day to day business.

IV. Procedure

1. Commitment Limitation:

(a) The Buyer is authorized to enter into agreements on behalf of Bell Aerosystems Company in amounts not in excess of $5,000, without the necessity of securing additional signature approvals. (Referenced form not required at this level.)

(b) In instances where awards are made in excess of $5,000, but less than $10,000, it is the responsibility of the Buyer to secure the signature approval of his group Supervisor prior to formalization of such commitments.

(c) Where the commitment exceeds $10,000, but not $25,000, it will require in addition, the signature approval of the Purchasing Agent.

(d) Commitments exceeding $25,000, but less than $50,000, will require the signature approval of the Assistant Director of Procurement in addition to those included in (a) through (c) above.

(e.1) When a commitment exceeds $50,000, the additional approval signatures of a member of the Negotiation Review Committee and the Director of Procurement will be required.

(e.2) Signature approval by the Program Manager and/or Technical Director is optional for any strata, and may be requested at Procurement's discretion.

Empl. Exh. No. 8

BELL AEROSYSTEMS COMPANY

DEPARTMENTAL JOB INSTRUCTION

NUMBER 121-304
SUPPLEMENT
PAGE 2 OF 2
DATE ISSUED 10/10/69
DATE REVISED 11/26/69

DIVISION Manufacturing FACILITY 11
DEPT. Procurement REF. DAPP
TITLE Signatory Approval Commitment Authority Request
TITLE

(f) In the event a commitment exceeds $100,000, the signature approvals of both the Vice President, Manufacturing, and Vice President, Finance, will be a requirement.

(g) Commitments made where consultants are being retained require, in addition to those delineated heretofor, the signature of the Executive Vice President or President, Legal/Patent.

(h) Commitments awarded on other than a firm fixed price basis require the signature of the Buyer, Analyst, Supervisor, Purchasing Agent, Assistant Director or Director of Procurement and Legal.

(i) Labor Hour and/or Time & Material commitments will require the signature of the Buyer, Analyst, Supervisor, Purchasing Agent, Assistant Director or Director of Procurement, and the Controller.

(j) A random sampling at the discretion of the Analyst, will be conducted regardless of strata. These will be submitted to the Assistant Director of Procurement for signature, prior to commitment.

V. Special Note - Mandatory Requirement

When a pre-negotiation advance procurement authorization is awarded, regardless of the initial amount committed, and the ultimate total will equal $5,000 or more, the prior approval as outlined in IV, 1 (a) thru (f) will be a requirement. In addition, Procurement Administration will be notified of this transaction in writing. A copy of the advance authorization will suffice.

VI. Responsibility

The Buyer will assume responsibility for completing Form 1064, Rev. 1069 and obtaining all required signatures.

VII. Distribution

All Procurement Personnel

Commitments by Buyers
1/2/69 through 7/31/70

Buyer	No.	Under $5,000	No. P.O.'s	Over $5,000	No. P.O.'s	TOTAL	No. P.O.'s
Chernowski	3	$ 37,325.	38	$ 342,951.	20	$ 380,276.	58
Salibe	4	381,370.	2040	464,001.	33	845,371.	2073
Hopkins	6	1,351,983.	3299	2,727,205.	133	4,079,188.	3432
Pfeil	7	51,990.	38	2,878,812.	24	2,930,802.	62
Pearson	10	131,865.	168	2,050,861.	28	2,182,726.	196
Clark	13	57,312.	36	463,121.	13	520,433.	49
Bar	14	105,963.	141	1,139,304.	35	1,245,267.	176
LaBella	15	15,462.	7	4,587,723.	20	4,603,185.	27
Kornelius	17	521,612.	721	1,031,902.	59	1,553,514.	780
Henderson	18	419,450.	2832	45,584.	6	465,034.	2838
Susanie	19	547,939.	1769	891,252.	66	1,439,191.	1835
Nolan	20	335,752.	387	730,658.	44	1,066,410	411
Hyland	21	455,334.	658	193,370.	19	648,704.	677
Smith	24	485,248.	1593	640,681.	29	1,125,929.	1622
Tomasino	28	552,070.	1362	2,276,235.	104	2,828,305.	1466
Burkard	29	8,276.	6	1,071,359.	13	1,079,635.	19
Manth	32	271,316.	1143	180,283.	17	451,599.	1150
O'Grosly	33	357,875.	967	3,373,346.	13	3,731,221.	980
Morris	36	11,305.	9	6,268,609.	7	6,279,914.	16
Gorapach	37	201,559.	210	713,364.	27	914,923.	237
Knoll	38	60,216.	42	736,382.	23	796,598.	65
Murphy	42	324,083.	3394	21,600.	1	345,683.	3395
Beresny	47	427,007.	1863	535,954.	48	962,961.	1911
Jancef	48	129,410.	194	381,615.	21	511,025.	215
Brooks	49	429,450.	2357	299,590.	24	729,040.	2381
		$7,671,177.	25,254	$34,045,762.	827	$41,716,934.	26,081

Empl's. Exh. No. 6

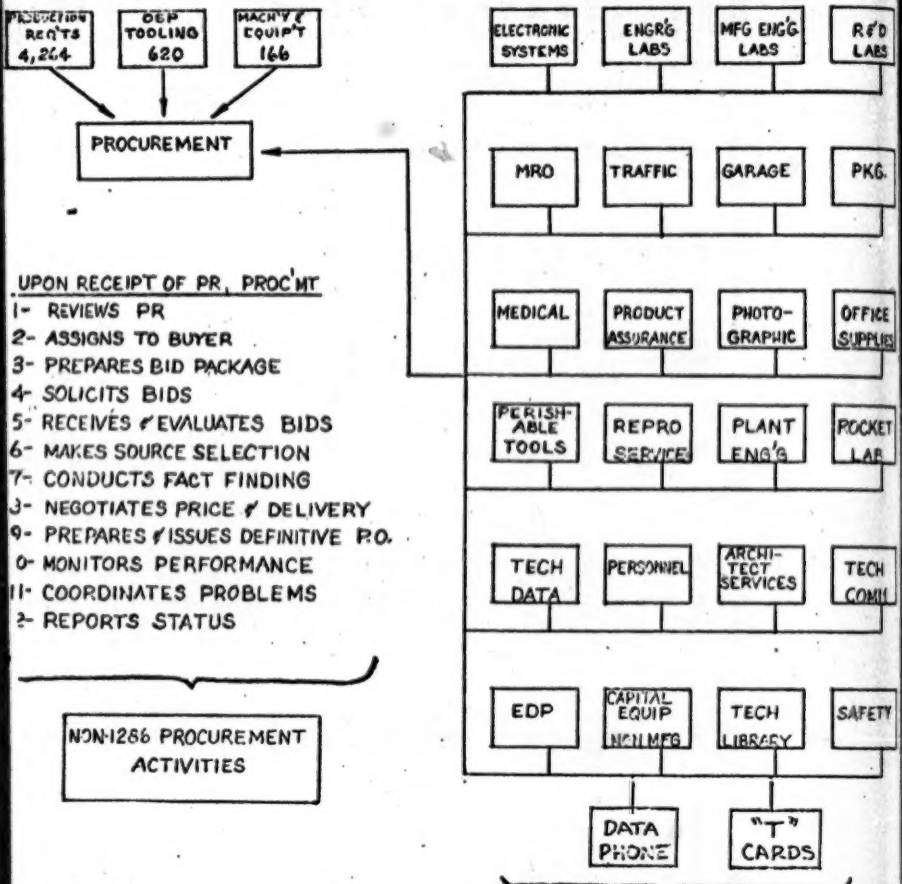
-8-

207

PURCHASE REQUISITION (PR) INPUT TO PROCUREMENT
JAN 1 THROUGH JULY 31, 1970 (TOTAL 15,977)

PR'S INITIATED BY 1286
(TOTAL 5,050 OR 31.6%)

PR'S INITIATED BY 26 OTHER SOURCES
(TOTAL 10,927 OR 68.4%)



UPON RECEIPT OF PR, PROC'MT

1- REVIEWS PR
2- ASSIGNS TO BUYER
3- PREPARES BID PACKAGE
4- SOLICITS BIDS
5- RECEIVES & EVALUATES BIDS
6- MAKES SOURCE SELECTION
7- CONDUCTS FACT FINDING
8- NEGOTIATES PRICE & DELIVERY
9- PREPARES & ISSUES DEFINITIVE P.O.
10- MONITORS PERFORMANCE
11- COORDINATES PROBLEMS
12- REPORTS STATUS

NON-1286 PROCUREMENT ACTIVITIES

26 VARIOUS NON-1286 INPUT SOURCES, ALL REQUIRING NON-1286 LINES OF COMMUNICATION

Empl. Exh. No. 10

BELL AEROSYSTEMS COMPANY

INTEROFFICE MEMO

February 19, 1970

Memo to: Mr. N. C. Willcox

Copy to: Messrs. W. S. Nochisaki, A. Kastelowitz, H. H. Cleveland, M. Blessing

SUBJECT: PBPS Subcontract Teams

Per your request the following is submitted:

The attached chart depicts the Procurement Team organization that has been established for the definition, solicitation, fact-finding, specification refinement, negotiation, commitment and subsequent management of subcontractor effort relative to PBPS requirements from the four suppliers of former BFE components.

Assistant Director of Procurement Harry H. Cleveland has been assigned primary Procurement responsibility for these subcontractors, and will assume active direction of related team efforts. He will closely monitor all aspects of team and subcontractor activity, and will insure maximum management attention to their performance and visibility.

F. M. Seitz
Director of Procurement

FMS/jpo

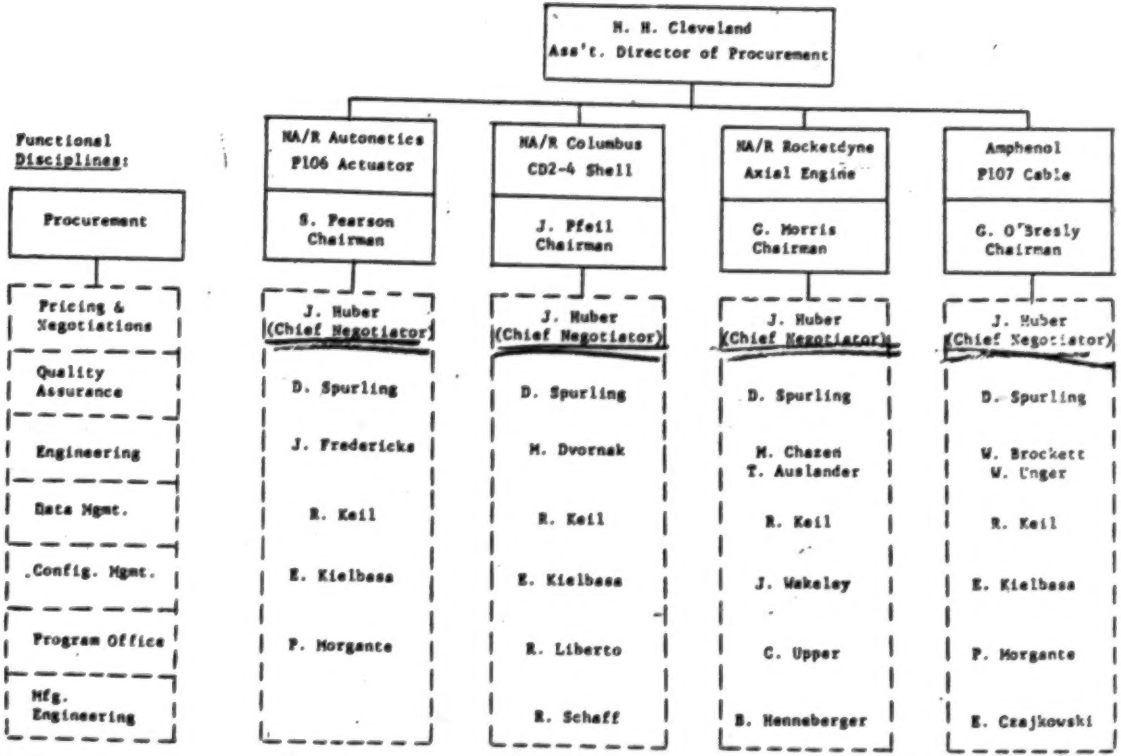
Attachment

SUB TRAC TAM:

Major (former BFE) Components

2/19/70

F. M. Seitz



-11-

Empl. Exh. No. 11 (2 pp.)

BELL AEROSYSTEMS COMPANY

EMPL. EXH. NO. 12

DEPARTMENTAL JOB INSTRUCTION

NUMBER 121-300
BAPP NO. A
PAGE 1 OF 2
DATE ISSUED 8/20/68
DATE REVISED 2/16/70

ORGANIZATION Manufacturing FACILITY 11
DEPT. Procurement REF. BAPP

TITLE Preparation for and Initiation of a Subcontract

I. Scope

Application of this DJI is mandatory on all procurements anticipated to exceed $50,000.

II. Purpose

To provide instructions and define functional routines attendant to: the preparation of requests for quote, analysis of proposals, pre-negotiation preparation, negotiation and the award to the successful bidder.

III. Procedure and Responsibility

A. The Buyer will:

1. Assure the adequacy of the bid package and issue a request for quote to qualified, potential subcontractors.

2. Provide the coordination/liaison between potential subcontractors and internal functional groups should any questions arise during the proposal stage.

3. Review the adequacy and responsiveness of the proposal format and content, i.e. DD 633, Certificate of Current Pricing, coverage of all requirements, such as software, tooling, hardware, quality, etc.

4. Issue interoffice memoranda to specific, specialized functions, requesting their assistance in the review and analysis of portions of the proposal within their responsibility.

   Example: Technical data to be submitted to Engineering.
   Fabrication and tooling data to Manufacturing.
   Rates (Labor, Overhead and G & A) to Finance, etc.

5. Initiate and issue the required Negotiation Notice (Form 1192) wherein the Buyer is negotiation team chairman, and adequate Bell support personnel are identified. It is important to assure that the negotiation objectives are established at least one week prior to the scheduled negotiation date.

BELL AEROSYSTEMS COMPANY

DEPARTMENTAL JOB INSTRUCTION

NUMBER 121-300
BAPP NO.
PAGE 2 OF 2
DATE ISSUED 8/20/68
DATE REVISED 2/16/70

ORGANIZATION Manufacturing . FACILITY 11
DEPT. Procurement REF. BAPP

TITLE Preparation for and Initiation of a Subcontract

III. Procedure and Responsibility (continued)

6. Conduct a pre-negotiation briefing session with the appropriate Purchasing Agent and the Assistant Director of Procurement. This briefing will consist of a written detailed report regarding the selection of contract type, complete cost element overview, and schedule negotiating objectives, as well as the technique advocated during actual negotiations. The target areas will specify validity of materials, subcontracting labor rates, hours and rates for appropriate categories such as: Engineering, Manufacturing, Quality Assurance and Reliability, etc. Also investigate accounting system to ascertain how elements such as overtime, packing and shipping, royalties, etc., are allocated. Precise dollar or percentage targets should then be established for each item.

7. As chairman, conduct negotiations with the potential subcontractor, in consonance with information and decisions rendered under foregoing items of procedure. In addition, the cognizant Supervisor will participate in all significant subcontract negotiation sessions within the scope of this DJI. When deemed necessary, the Purchasing Agent and/or the Assistant Director of Procurement will also participate.

8. Issue a detailed negotiation summary immediately on completion of negotiations.

9. Issue a definitized purchase order or subcontract based on the results of the foregoing negotiations.

IV. Distribution

Procurement Supervision
Procurement Buyers
Manufacturing Controls
Management Engineering
Finance

jw

182 Rev. 465 Sheet 1

213

COST REDUCTION REPORT

By 11	Glass Vapor Shields	5/19/70
	Swift Glass Division	A.G. Saliba

[X] NEW SOURCE

EXPLANATION: Procurement received P/R No. 043063 to purchase 400 pcs. P/N 12P0564446 Vapor Shields from Hamilton Standard for use on Model W-2 Hamilton Standard Electron Beam Welding machines. Last purchase price was at $1.55 each.

The Buyer ~~immediately~~ contacted Lou Sarna, Electron Beam Welding Supervisor, to gather further information on this item i.e. material, specific dimensions, usage, other pertinent details. It was than decided that this item could be supplied by any Glass supply company.

In a coordinated effort, Lou Sarna, supplying the samples and exact material and dimensions, the Buyer than sketched an informal drawing incorporating the material required, dimensions, and tolerances as supplied by Lou Sarna. An RFD was then forwarded to known glass suppliers with samples.

- continued -

NET REDUCTION:

ORIGINAL UNIT PRICE _____ QUANTITY THIS ORDER _____

NEW UNIT PRICE _____ REDUCTION THIS ORDER _____

REDUCTION PER UNIT _____ EST ANNUAL TOTAL RED'N _____

OTHER NET REDUCTION _____

SUPERVISOR _____

VALIDATION _____

MANAGER _____

Empl. Exh. No. 13 (1 of 2)

COST REDUCTION REPORT

Bell	Glass Vapor Shields	5/19/70
	Swift Glass Division	A.G. Saliba

REASON FOR REDUCTION:

[ ] MATERIAL SUBSTITUTION	[ ] CHANGE [illegible] TO MRS
[ ] CHANGE IN PROCESS	[ ] CHANGE [illegible] POINT
[ ] REDUCTION IN SCOPE	[ ] [illegible]
[ ] "MAKE" OR "BUY"	[ ] [illegible]
[ ] QUALITY IMPROVEMENT	[ ] REDUCTION [illegible]
[ ] NEW SOURCE	[ ] [illegible]
[ ] NEGOTIATION (DESCRIBE BELOW)	[ ] OTHER (DESCRIBE BELOW)

EXPLANATION: Results:

1) A formal order was placed with Swift Glass Division, Elmira, New York for 400 pcs., later increased to 800 pcs.

2) Alternate source, Swift Glass Division created.

3) Hamilton Standard -

800 pcs. @ $1.35/each $1240.00

Swift Glass Division -

800 pcs. @ $ .20/each 160.00

Set up charge 10.00 $170.00

Savings: $1,070.00

ORIGINAL UNIT PRICE _____ QUANTITY THIS ORDER _____

NEW UNIT PRICE _____ REDUCTION THIS ORDER 1,070.00

REDUCTION PER UNIT _____ EST. ANNUAL TOTAL [illegible] _____

[illegible] _____

[illegible] _____

VALUE ANALYST _____

-13- Empl. Exh. No. 13(2 of 2)

COST REDUCTION REPORT

Army ACV Spares	V5L35440, Dump Valve	5/19/70
	Skinner Precision	A.G. Saliba

- [ ] MATERIAL SUBSTITUTION
- [ ] CHANGE IN PROCESS
- [ ] ELIMINATION OF SCRAP
- [ ] MAKE OR BUY
- [ ] QUALITY IMPROVEMENT
- [x] NEW SOURCE
- [ ] NEGOTIATION (DESCRIBE BELOW)
- [ ] CHANGE IN SPECIFICATIONS
- [ ] CHANGE IN PURCHASE TERMS
- [ ] ESTABLISHED PLANNED SAVINGS
- [ ] COMBINED REQUIREMENTS
- [ ] REDUCTION IN PAPER WORK
- [ ] VENDOR RECOMMENDATION
- [ ] OTHER (DESCRIBE BELOW)

EXPLANATION: Procurement received P/R No. 041805 to purchase one (1) unit X3569L1 Dump Valve from General Electric Company. G.E.'s quotation was received and a 37.7% increase in unit price, over a previous purchase, noted. G.E. was immediately notified and an explanation for the price increase was requested.

The Buyer then contacted the Program Manager and in a concerted effort, was able to determine G.E.'s supplier for this unit. (Skinner Precision) and exact part number. An RFQ was forwarded to Skinner Precision.

G.E. subsequently advised that they could not reduce the unit cost. The Buyer then contacted Program Management to request authorization from the Army to utilize the Skinner unit.

- COST REDUCTION
- PRESENT PART NUMBER
- QUANTITY THIS MONTH
- NEW PART NUMBER
- ESTIMATED SAVINGS
- RECOMMENDATION
- EST. ANNUAL TOTAL USE
- COST REDUCTION

SUPERVISOR

VALIDATION

Empl. Exh. No. 14(1 of 2)

COST REDUCTION REPORT

Army ACV Spares	V5L35440 Dump Valve	5/19/70
	Skinner Precision	A.G. Saliba

- [ ] MATERIAL OR SPECIFICATION CHANGE
- [ ] CHANGE IN PROCESS
- [ ] REDUCTION IN SCOPE
- [ ] "MAKE" OR "BUY"
- [ ] QUALITY IMPROVEMENT
- [ ] NEW SOURCE
- [ ] NEGOTIATION (DESCRIBE BELOW)
- [ ] STANDARD PRACTICE CHANGE
- [ ] [illegible]
- [ ] ADDITIONAL PROCESSING
- [ ] CHANGE REQUIREMENTS (DO)
- [ ] REDUCTION IN PARTS USE
- [ ] VENDOR RECOMMENDATION
- [ ] OTHER (DESCRIBE BELOW)

EXPLANATION: Results:

1) Authorization from the Army received and formal order for two (2) units placed with Skinner Precision.

2) Alternate source created.

3) Savings:

General Electric - 1 unit @ $58.20

Skinner Precision - 1 unit @ 25.00

Savings ---- $33.20

ORIGINAL UNIT PRICE _____ QUANTITY PURCHASED _____

NEW UNIT PRICE _____ SAVINGS THIS ORDER 33.20

DEVELOPMENT COST _____ DOD APPROVAL COST _____

OTHER SAVINGS _____

SUPERVISOR _____

VALIDATION _____

DISPOSITION _____

Empl. Exh. No. 14 (2 of 2)

COST REDUCTION REPORT #37 Co. Ex #15

PROGRAM	PART NO. & NAME:	DATE:
Helicopter	90-005-5 Latch	7-17-70
CONTRACT:	**VENDOR:**	**BUYER:**
DAA J01-68-A-0022	Avdel, Incorporated	J. T. Beresny

REASON FOR REDUCTION: Ref: P.O. 489823-47

- ☐ MATERIAL SUBSTITUTION
- ☐ CHANGE IN PROCESS
- ☐ REDUCTION IN SCOPE
- ☐ "MAKE" OR "BUY"
- ☐ QUALITY IMPROVEMENT
- ☒ NEW SOURCE
- ☐ NEGOTIATION (DESCRIBE BELOW)
- ☒ CHANGE IN DISCOUNT TERMS
- ☐ CHANGE IN FOB POINT
- ☐ ESTABLISHED BLANKET ORDER
- ☐ COMBINED REQUIREMENTS: EOQ
- ☐ REDUCTION IN PAPER WORK
- ☐ VENDOR RECOMMENDATION
- ☐ OTHER (DESCRIBE BELOW)

EXPLANATION: As a result of the Buyer's persistance and encouragement to Avdel to remain available and to obtain qualification as an alternate source, a savings of $6,123.00 was made possible on this requirement. Avdel was recently approved as a second source against Bell Helicopter Standard Drawing 90-005-5. Since competition was involved on this quote, the price was reduced from $3.75 to $2.75 each. Additionaly a savings of $84.19 will occur on the 1/2% discount offered by Avdel. Hartwell offered no discount.

Savings: $6,123.00
Discount (½%) 84.19
$6,207.19 - Total savings this requirement

J. T. Beresny 7/24/70

NET REDUCTION: (See Summary Attached)

ORIGINAL UNIT PRICE $ 3.75
NEW UNIT PRICE $ 2.75
REDUCTION PER UNIT $ 1.00
QUANTITY THIS ORDER 6,123
REDUCTION THIS ORDER $6,123.00 *
EST. ANNUAL TOTAL RED.
OTHER NET REDUCTION

* + 87% Incl

SUPERVISOR
VALIDATOR
MANAGER

COST REDUCTION REPORT

EMPL. EXH. No. 16

PROGRAM:	PART NO & NAME:	DATE:
Bell Helicopter	3" th X 44" x 96" BHC Spec. 299-947103 Honeycomb	7/24/70
CONTRACT:	VENDOR:	BUYER:
DAAJ01-68-A-0022	Honeycomb Products Co.	E. R. Swannie

REASON FOR REDUCTION:

- [ ] MATERIAL SUBSTITUTION
- [ ] CHANGE IN PROCESS
- [ ] REDUCTION IN SCOPE
- [ ] "MAKE" OR "BUY"
- [ ] QUALITY IMPROVEMENT
- [X] NEW SOURCE
- [ ] NEGOTIATION (DESCRIBE BELOW)
- [ ] CHANGE IN DISCOUNT TERMS
- [ ] CHANGE IN FOB POINT
- [ ] ESTABLISHED BLANKET ORDER
- [ ] COMBINED REQUIREMENTS: EDO
- [ ] REDUCTION IN PAPER WORK
- [ ] VENDOR RECOMMENDATION
- [ ] OTHER (DESCRIBE BELOW)

EXPLANATION: Bell Helicopter Co. Dwgs. 209-060-805 Fwd. Pylon, 209-060-807 Aft Pylon, 209-060-811 Center Pylon and 209-060-882 Door Pylon - Fairings specified the use of a single source item, Hexcel Corp. HRH-10 Honeycomb. The Buyer pursued and succeeded in obtaining qualification of Honeycomb Products Co. material type HMX, to meet BHC Specification. This resulted in Engineering orders being issued by Program Management, allowing the use of the BHC Specification and Honeycomb Products Co. HMX material

NET REDUCTION:

ORIGINAL UNIT PRICE	$11.74/sq ft	QUANTITY THIS ORDER	355 sq ft
NEW UNIT PRICE	$ 9.43/sq ft	REDUCTION THIS ORDER	$820.05
REDUCTION PER UNIT	$ 2.31/ sq ft	EST. ANNUAL TOTAL RED.	

OTHER NET REDUCTION

5

SUPERVISOR

VALIDATOR

MANAGER

BELL AEROSYSTEMS COMPANY
A Textron COMPANY

PURCHASE REQUISITION/PURCHASE ORDER/RECEIVING REPORT

P.O. DATE

P.O. NO. 1320-36

GOV'T. CONTRACT NO. E04701-69-C-0193

PRIORITY RATING CERTIFIED UNDER DMS. REG. 1. DX A2

TERMS

F. O. B.

P.R. NO. 022531

PRICE & DELIVERY PER YOUR

AN ENTRY BELOW CONFIRMS OUR ORDER PLACED.

CHANGE INFORMATION

COPR. NO.

COPO. NO.

CANCEL

DELIVERY

OTHER

AWARD CODE

ROCKETDYNE

BILL — LETTERHEAD ADDRESS AND UNLESS OTHERWISE STATED.

SHIP TO — WHEATFIELD PLANT
NIAGARA FALLS BLVD.
NIAGARA FALLS, N. Y.

SHIP VIA PARCEL POST

ESTABLISHED ROUTING UNLESS OTHERWISE STATED

REQUIREMENT REFERENCE NO. E42091

VENDOR NO. DC

INVENTORY TYPE

ITEM NO.	QUANTITY	U/M	PART NO.	DESCRIPTION	REQ. NO.	ACCT. CODE	SUB. ACCT.	PROJECT NO.	REQUISITION REFERENCE NO.	UNIT PRICE	PER	TOTAL PRICE
				TO AUTHORIZE THE PROCUREMENT OF LONG LEAD MATERIAL TO SUPPORT FABRICATION OF ITEMS 1, 2 & 3 AS LISTED: R8000200-0001-005 (1). 107 PCS. R8000200-0001-005 AXIAL ENGINES. (2). 107 PCS. ST2840004 REV 001 HI-THRUST BI-PROP VALVES FROM MOOG, INC. (MODEL SPEC. S-133-1004-51-6). 2) NOTWITHSTANDING 6.8 SCN A1-5 7-16-69 AND ATTACHMENT #6 TO S-0969-038-00, CCRD CHANGE. (SEE ATTACHMENT CONTINUATION)	8152	200	521					

DCPS

219

219

BUYER'S EXHIBIT 17

ORDERED BY	DATE	FOR	Q.C. CLAUSES	SUBJECT TO — AT RECEIVING INSPECTION	LOCATION	CAP CODE	BUYER NAME	SIGN
	11-03-69	DNW-1RE42-09-01				012		

THIS IS A **PURCHASE ORDER** WHEN P.O. NO. IS ENTERED AND APPROVED BUYER SIGNS BELOW

BUYER NO.

SUGGESTED SOURCE, SPECIAL INSTRUCTIONS, ESTIMATED COST

EXPLAIN IN DETAIL WHERE ITEM(S) WILL BE USED

INFORMATION TO ASSIST IN DETERMINING QUALITY CONTROL CLAUSES

APPROVAL SIGNATURES/STAMPS AND DATES

DEPT. APPR.

QUALITY APPR.

REV.

PROJECT

ACCEPTED FOR Aerojet-General Corporation NOV 4 1969 PURCHASING

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45

(3). 2219 ALUMINUM INJECTOR MATERIAL.

INITIAL SUBCONTRACT COST AUTHORIZED - $5,000.

DATA ITEMS BEING AUTHORIZED WITH DWI-1BE41-01-1, WORK ORDER/COST CODE 8112-010 AND DWI-1BE41-02-1, WORK ORDER/COST CODE 8113-010 ARE ALSO INCLUDED IN THE INITIAL SUBCONTRACT.

IDENTIFICATION AND TRACEABILITY WILL BE IMPOSED PER 8477-9470412, N/C ON THE 2219A.L AND BY ROCKETDYNE ON MOG FOR THE VALVE MATERIALS. ROCKETDYNE WILL DEFINE THE CRITICAL MATERIALS FOR MOG TRACEABILITY.

NOTE: THIS PROCUREMENT IS IN REFERENCE TO ROCKETDYNE QUOTE NO. 69RC6779 DATED 3 JUNE 1969, AND NO. 69RC8132 DATED 23 JUNE 1969. A MARKED-UP STATEMENT OF WORK WITH EXCEPTIONS, DEVIATIONS, ETC, IS TO BE RESOLVED BY BA: AND ROCKETDYNE PRIOR TO RECEIPT OF ALL MATERIAL AT SUBCONTRACTOR.

BELL AEROSYSTEMS COMPANY

CHANGE OF PURCHASE REQUISITION

ORIGINAL P.O. NO. _____

C.O.P.A NO. 1

ORIGINAL P.R. NO. 022531

C.O.P.R. DATE 111969

ORIGINAL P.O. DATE _____

ORIGINAL P.R. DATE 110369

CHARGE NO. [redacted] GOVT. CONTRACT NO. F04701-69-C-0193

BHC-200-50

ROCKETDYNE

DX A-2

REF. NO.	QUANTITY	UNIT	BELL PART NO. / DESCRIPTION	UNIT PRICE	TOTAL PRICE
PURCHASE REQUISITION NOW READS IN WHOLE OR IN PART:					
			LONG LEAD MATERIAL PROCUREMENT		
			SUPPORT FOR 107 UNITS		
			R$ 100220-001-5 AXIAL ENGINES		
			$575,000.00		
PURCHASE REQUISITION IS CHANGED TO READ:					
			CHANGE LONG LEAD MATL PROCUREMENT		
			SUPPORT TO 114 UNITS DUE TO		
			INCLUSION OF IQAT UNITS &		
	10 7		INCREASE FUNDING TO $612,500.00		

APPROVED BY 409

PBPS

11/24

OAP SEZ BELL

REASON(S) FOR THE CHANGE:

Bell Aerosystems Company NOV 20 1969 COPY

WRITTEN BY 111969

AUTHORIZED BY R. Lindsey 111969

BUYER

NO. 36

220B

BELL AEROSYSTEMS COMPANY

CHANGE OF PURCHASE REQUISITION

220B

ORIGINAL P.O. NO. _____

C.O.P.R. NO. 2

ORIGINAL P.R. NO. 022531

C.O.P.R. DATE 020470

ORIGINAL P.O. DATE _____

ORIGINAL P.R. DATE 110369

CHARGE NO. 8112-010-521

GOVT. CONTRACT NO. F04701-69-C-0193 DX42

ROCKETDYNE

REF. NO.	QUANTITY	UNIT	BELL PART NO. / DESCRIPTION	UNIT PRICE	TOTAL PRICE
PURCHASE REQUISITION NOW READS IN WHOLE OR IN PART:					
			CHANGE LONG LEAD MAT'L PROCUREMENT		
			SUPPORT TO 114 UNITS R$ 000020-001		
			AXIAL ENGINES, DUE TO INCLUSION		
			OF 6 AT UNITS & INCR. FUNDING TO		
			$613,520.00		
PURCHASE REQUISITION IS CHANGED TO READ:					
	--	(1)	FABRICATE AS FOLLOWS:		
	107	UNITS	R$ 000020-001-6 ENGINES - CHG. W.O. 8112-010-521		
	3	"	" " " " " 8112-010-522		
			(NOTE: 6 ADDITIONAL ENGINES		
			AUTHORIZED FOR SAMPLING TEST		
			PROCEDURES AT ROCKETDYNE —		
			CHG. W.O. 8112-010-521.)		
		(2)	INCORPORATE ATTACHED N/C in detail by work		
			WORK STATEMENT. statement # 50RL		
			FUNDING IS AUTHORIZED AS [redacted]		
			ALLOCATED ON C.RAE COMMITMENT		
			SCHEDULE OF 12/11/69		

Changes 30V, 34

Documentation req'd.

REASON(S) FOR THE CHANGE:

TO AUTHORIZE FABRICATION OF ENGINES.

FEB 6 1970

WRITTEN BY 020470.

AUTHORIZED BY 020470

BUYER

NO. 30

BELL AEROSYSTEMS COMPANY

CHANGE OF PURCHASE REQUISITION

ORIGINAL P.O. NO.

C.O.P.R. NO. 3

ORIGINAL P.R. NO. 022531

C.O.P.R. DATE 040170

ORIGINAL P.O. DATE

ORIGINAL P.R. DATE 110369

CHARGE NO. 8152-200-521 (Gen Admin)

GOVT. CONTRACT NO. F04701-69-C-0193 DXA2

TY AS

ROCKETDYNE Rev. "E" 9/70

REV. NO.	QUANTITY	UNIT	BELL PART NO./DESCRIPTION	UNIT PRICE	TOTAL PRICE
PURCHASE REQUISITION NOW READS IN WHOLE OR IN PART:					
	104	PCS	R$000200-001-06 AXIAL ENGINE		
			(NOTE: 6 ADDITIONAL ENGINES		
			AUTHORIZED FOR SAMPLING TESTS		
			AT ROCKETDYNE.)		
PURCHASE REQUISITION IS CHANGED TO READ:					
	110		[redacted] 8477-470025-1		
			+(6 UNITS SAMPLING - SAME).		
			EXCEPT -		
			1. CHANGE W.O. CHARGE FROM		
			8112-010-521 TO 8152-200-521		
			AS ABOVE.		
			2. INCORPORATE N/C SPEC. CONTROL		
			DRWG. 8477-470025.		
			3. INCORPORATE SERIALIZATION		4/6
			AAD0301 THRU AAD0416.		
			4. INCORPORATE N/C CIT.		
			5. " DELY SCHEDULE		
			OF 3 PER WK. STARTING 072470.		

PBPS

BAP 343 BELL

APPROVED 4-7-70

REASON(S) FOR THE CHANGE:

As above. R.G. Lindsay

Bell Aerosystems Company APR 2 1970 COST ESTIMATING

WRITTEN BY		AUTHORIZED BY	BUYER	NO.
	040170	R. Lindsay 4/6/70		36

220D

FORM 0000 REV. 100

BELL AEROSYSTEMS COMPANY

CHANGE OF PURCHASE REQUISITION

220D

ORIGINAL P.O. NO. _____

C.O.P.R. NO. 4

ORIGINAL P.R. NO. 022-531

C.O.P.R. DATE 05[illegible]70

ORIGINAL P.O. DATE _____

ORIGINAL P.R. DATE 110369

CHARGE NO.	GOVT. CONTRACT NO.
252-200-521	FC[illegible]701-64-C-0193 - DX12

ROCKETDYNE

REF. NO.	QUANTITY	UNIT	BELL PART NO. / DESCRIPTION	UNIT PRICE	TOTAL PRICE
PURCHASE REQUISITION NOW READS IN WHOLE OR IN PART:					
	116	EA.	8477-470125-1 AXIAL ENGINE		
			S/N's AAD 301 THRU AAD 0446		
PURCHASE REQUISITION IS CHANGED TO READ:					
	116		SAME - EXCEPT INCORPORATE		
			CIL REV. A EFFECTIVE		
			ON S/N AAD 301 & SUBS		

PBPS

Bell Aerosystems Co. PBPS Purchasing ... ORDERED BY ... AAA

REASON(S) FOR THE CHANGE:

INC. CIL Rev.

Bell Aerosystems Company JUN 1 1970 COST ... By

WRITTEN BY	AUTHORIZED BY	BUYER	NO.
052870	052870		36

BELL AEROSYSTEMS COMPANY

CHANGE OF PURCHASE REQUISITION

220E

ORIGINAL P.O. NO. 162099-36
C.O.P.R. NO. 5
ORIGINAL P.R. NO. 025531
C.O.P.R. DATE 061270
ORIGINAL P.O. DATE
ORIGINAL P.R. DATE 110369

CHARGE NO. 8152-200-521 | GOVT. CONTRACT NO. F04701-67-C-0193 | DXA2

POCKET DYNE

REF. NO.	QUANTITY	UNIT	BELL PART NO. /DESCRIPTION	UNIT PRICE	TOTAL PRICE
PURCHASE REQUISITION NOW READS IN WHOLE OR IN PART:					
	110	EA.	8477-470023-1 AXIAL ENGINE		
	6		" " " " " -SAMPLING UNITS		
			S/N's AAD301 THRU AAD 0446.		
PURCHASE REQUISITION IS CHANGED TO READ:					
	110	EA.	SAME		
	6	"	" EXCEPT INCORPORATE CIT REV. B DATED 8 JUNE 70 EFFECTIVE ON S/N AAD 301		
			# SUBS.		

Original Copy #1

PBPS

Bell Aerosystems Co. Buffalo, N.Y. Received by Eng. Dept. 6-17-70

Bell Aerosystems Company JUN 16 1970 Purch. Dept.

REASON(S) FOR THE CHANGE:

AS ABOVE.

WRITTEN BY	AUTHORIZED BY	BUYER	NO.
061270	061270		36

From the desk of: H. E. SMITH

YOUR PURCHASE ORDER MUST INCLUDE THE FOLLOWING STATEMENT:-

"D. C. A. S. DELEGATION OF AUTHORITY IS IN EFFECT ON THIS ORDER"

IT IS THE BUYER'S RESPONSIBILITY TO ASSURE THAT SIX (6) COPIES OF ORIGINAL PURCHASE ORDER, LETTERS OF AWARD OR INTENT, AND ALL SUBSEQUENT CHANGES BE SENT TO PAUL HOEN, DCASO, Z-D-42.

H. E. Smith
Quality Assurance

cly note No. 1 7/21/70

220G

BELL AEROSYSTEMS COMPANY

CHANGE OF PURCHASE REQUISITION

2206

ORIGINAL P.O. NO. 162099-36
C.O.P.R. NO. #6
ORIGINAL P.R. NO. 022531
C.O.P.R. DATE 071370
ORIGINAL P.O. DATE
ORIGINAL P.R. DATE 110569

CHARGE NO. 8152-200-531
GOVT. CONTRACT NO. F04701-69-C-0193-3X42

REF. NO.	QUANTITY	UNIT	BELL PART NO. / DESCRIPTION	UNIT PRICE	TOTAL PRICE
PURCHASE REQUISITION NOW READS IN WHOLE OR IN PART:					
	110	Pc	8477-470025-1 AXIAL ENGINE		
	6	Pc	" " " " " (SAMPLING UNITS)		
			S/N AAD0301 thru AAD0416		
PURCHASE REQUISITION IS CHANGED TO READ:					
	710	Pc	SAME		
	6	Pc	SAME		
			S/N SAME		
			EXCEPT:		
			INC. CII REV'S DATED 6-24-70		
			ATTACHED		
			Change ge clause 300 to 310 ht gold rate per the attached.		

PROS

7/14

DAP 362 BELL

REASON(S) FOR THE CHANGE:

Per above

Bell Aerosystems Company JUL 1 1970 COST DEPT.

WRITTEN BY: [signature] 071370
AUTHORIZED BY: [signature] 071370
BUYER
NO. 36

BELL AEROSYSTEMS COMPANY

CHANGE OF PURCHASE REQUISITION

220N ON S20 REPORT

ORIGINAL P.O. NO. 162059-36

C.O.P.R. NO. 8

ORIGINAL P.R. NO. 022531

C.O.P.R. DATE 092870

ORIGINAL P.O. DATE

ORIGINAL P.R. DATE 110367

CHARGE NO. P1522-200-S21

GOVT. CONTRACT NO. F04701-69-C-0193 DXA2

POCKET DYNE

REF. NO.	QUANTITY	UNIT	BELL PART NO. /DESCRIPTION	UNIT PRICE	TOTAL PRICE
PURCHASE REQUISITION NOW READS IN WHOLE OR IN PART:					
010	110	EA.	8477-470025-1 AXIAL ENGINE-DELIVERABLE		
	(6)	"	" " -1 COAT SAMPLING UNITS- (NON-DELIVERABLE)		
			S/N'S AAD301 THRU AAD0416		
			MATERIAL TYPE A5		
PURCHASE REQUISITION IS CHANGED TO READ:					
	"		8477-470025-1 AXIAL ENGINE		
010	110		CREF. R8000200-001-06 • DELIVERABLE		
	(6)		" " " COAT SAMPLING (NON-DELIVERABLES)		
			DRWG. REV. M, CII REV. D		
			S/N'S SAME AS ABOVE		
			CHG. PT. NO. ON S20 REPORT TO		
			REF. PT. NO. & CHG. MAT'L TYPE TO B2.		
			NOTE: FOR INTERNAL DISTRIBUTION ONLY.		

9/28

REASON(S) FOR THE CHANGE:

TO CONFORM UNDER BFE NO., AS TOP ASSY DRWG WAS NOT CHANGED TO INCORP SCO

WRITTEN BY 092870

AUTHORIZED BY R. Lindsey 092870

BUYER

NO. 36

BELL AEROSYSTEMS COMPANY

INTEROFFICE MEMO

22 October 1969
JRB:69:10:268

Memo to: Mr. J. F. Gill, Vice President/Product Assurance

Copies to: Messrs. H. H. Cleveland, H. F. Koningisor, C. A. Rae, F. M. Seitz, W. D. Sinks

SUBJECT: Zero Defects Program

Reference: 8477-471384-3 Seamless Bellows

In an effort to counteract repeated surface finish problems at DK Aerospace Company, Batavia, Illinois, BAC Procurement has been encouraging and promoting a Zero Defects Program at that facility. We have aroused the interest of DK Aerospace's management and laid the foundation for such a program to the best of our ability.

In order to pursue this effort further, it is requested that the services of Mr. R. A. Gahr be made available to accompany BAC Procurement to DK Aerospace Company to conduct an orientation program.

Upon notification of the availability of Mr. Gahr, such trip arrangements will be made.

James R. Burkard, Buyer
Procurement Department
Ext. 7803, Mail Zone T58

JRB:t

Form 0540 Rev. 1967

BELL AEROSYSTEMS COMPANY

INTEROFFICE MEMO

22 October 1969
JRB:69:10:268

Memo to: Mr. J. F. Gill, Vice President/Product Assurance

Copies to: Messrs. H. H. Cleveland, H. F. Koenigsror, C. A. Rae, F. M. Seitz, W. D. Sisko

SUBJECT: Zero Defects Program

Reference: 8677-471396-3 Seamless Bellows

In an effort to counteract repeated surface finish problems at DK Aerospace Company, Batavia, Illinois, BAC Procurement has been encouraging and promoting a Zero Defects Program at that facility. We have aroused the interest of DK Aerospace's management and laid the foundation for such a program to the best of our ability.

In order to pursue this effort further, it is requested that the services of Mr. R. A. Cahr be made available to accompany BAC Procurement to DK Aerospace Company to conduct an orientation program.

Upon notification of the availability of Mr. Cahr, such trip arrangements will be made.

James R. Barkley, Buyer
Procurement Department
Ext. 7803, Mail Zone T59

JRB:t

T W X

Date 2/10/70 Time P.M. Dept. No. 121 Sender K. W. Knoll, Buyer BA No.

Address:

Santa Fe Springs (City) California (State) TWX: 910-586-1343 (Call Number) PYRONETICS, INCORPORATED (Firm Name)

Attention: Mr. Andy Tierney COPY TO: Mr. H. F. Eckardt, President - Pyronetics, Inc.
COPY TO: Messrs. R. Keehan, F. Monroe, and W. Schwartz - WHO

Message:

SUBJECT: Price Negotiations - Gas and Propellant Isolation Valves - PEPS - RAMSO Production

In reply, please refer to: BELL MESSAGE KWK:70:02:062

On 6 February 1970, price negotiations were temporarily broken off due to inability to reach agreement on firm-fixed price for 599 valves.

The following is a summary of what Bell's final offer was:

Purchase Parts	$ 91.69
Subcontract Items (Cartridge)	$165.00
Planning:	
.2 Hours @ $7.50 = $ 1.50	
Machine Shop:	
6.0 Hours @ $4.49 = $26.94	
Process and Assembly:	
2.4 Hours @ $4.10 = $ 9.84	
Quality Control:	
4.0 Hours @ $4.41 = $17.64	
Reliability and Test:	
1.0 Hours @ $5.40 = $ 5.70	
Total Direct Labor	$ 61.62
Labor Overhead - 158%	$ 97.36
Factory Cost	$415.67
Engineering O/H @ 9.2%	$ 38.24
G & A @ 26%	$108.07
Sub-Total	$561.98
Profit - 10% Net	$ 62.43
SELLING PRICE	$624.41

DO NOT TWX CLASSIFIED INFORMATION

Form 0685

T W X

Date 2/10/70 Time _____ Dept. No. _____ Sender K. W. Knoll BA No. _____

Address:

_____ City _____ State _____ Call Number PYRONETICS, INCORPORATED Firm Name

Attention: _____

Message:

This offer was based on actual direct labor hours as experienced on the previous procurement and overhead rates in accordance with the recently completed DCAA audit.

Bell also offered the hours as stated above using Pyronetics proposed overhead rates (180% Factory Overhead, 14.5% Engineering Overhead and 33.5% G & A) subject to adjustment of the rates downward after completion of the contract and audit by Bell.

As a result of Pyronetics rejection of these two (2) Bell offers, the negotiations were temporarily terminated to be resumed upon completion of the following action by Pyronetics:

1. Furnish Bell with a complete and detailed priced bill of material supported by current vendor quotes or purchase orders for the quantity of valves being fabricated.

2. Furnish a copy of Pyronetics purchase order to SCS for 599 Cartridges at the negotiated unit price.

3. Request a meeting with DCAA to review their findings and recommendations as a result of the recently completed audit.

4. Advise firm date for resumption of negotiations.

Pyronetics estimated lead time for completion of the above items is one (1) week.

Please acknowledge receipt and concurrence by return wire.

K. W. Knoll, Buyer
Procurement Department
Mail Zone T-58

KWK:csg

cc: Mr. J. P. Kamp
KWK:File

DO NOT TWX CLASSIFIED INFORMATION

Pyronetics, inc.
SUBSIDIARY OF COSMODYNE
10025 SHOEMAKER AVE., SANTA FE SPRINGS, CALIFORNIA 90670. PHONES: (213) 723-9281-941-0237 · TWX 910-588-1443

W. F. ECKARDT
PRESIDENT

21 February 1970

Bell Aerospace Company
Division of Textron Inc.
Post Office Box One
Buffalo, New York 14240

Attention: Mr. K. W. Knoll, Buyer
Procurement Department, Zone T 58

Subject: Minuteman II Requirements for 1970

References:
A. Bell RFQ 38-41757 and 38-41754
B. Pyronetics Quotation Letter dated 2 February 1970
C. Bell TWX KWK:70:02:062
D. Bell TWX Msg. No. 35 dated 13 February 1970

Gentlemen:

We have completed the action items resulting from the negotiations conducted in Buffalo during the week of 2 February 1970. Materials cost detail has been submitted under separate cover; we have discussed our proposal with the DCAA auditor.

The offers made by Bell during negotiations are not acceptable to Pyronetics. Pyronetics presented its best price during the negotiations on 6 February, and must stand firm at that point. Consequently, there can be no value in another trip to Buffalo.

A detailed discussion of Pyronetics best offer follows below.

Materials

The materials required to perform the work have been amply justified in our letter.

Mr. K. W. Knoll

21 February 1970

Labor Rates

The labor rates presented (P nning at $7.50/hour, Machine Shop at $4.49/hour, Process and Assembly t $4.10/hour, Quality Control at $4.41/hour and Reliability at $5.70/hour) are acti l current rates, and have been disclosed to Bell in complete detail.

Overhead Rate

Pyronetics was successful in educing overhead costs from $290,769 in 1968 to $248,919 in 1969 (output ba s). The latter figure represents, in our judgment, the minimum staff with he capability to perform work of the Minuteman class. The overhead staff consists of the Production Manager and his Assistant, the Buyer, the Expedit , the Shipping and Receiving Clerk, the Quality Control Manager, the Reliabil y Manager, and two clerks. All of these functions are necessary.

Overhead costs are expected o rise to $270,000 in 1970 as a result of:

1. Wage increases for he overhead staff.

2. Improved fringe ben fits for the entire labor force.

3. Increased depreciat n charges, reflecting the capital improvements mad in 1969.

The direct labor base for es mating 1970 overhead rates is predicated on maintaining approximately the san level of sales achieved in 1969, and the labor estimated to do that work, cons stent with 1969 experience. The assumption of maintaining sales is now questiona le, thanks to the stretchout of the Viking Program; that program contributed substantial portion of our sales forecast.

Consequently, an overhead r te higher than 180% is more likely than a lower rate.

No significant change in inv tory is expected in 1970; therefore considering overhead on an output ba is yields the same answers as use of the input basis.

Engineering Rate

Engineering costs for 1968 d 1969 were $128,044 and $118,225, respectively. Costs for 1970 are ex cted to rise to $132,000, primarily due to the addition of one engineer to bring ur staff to a competent strength level.

Cost of sales in 1970 (assu ng sales of $1,400,000) are expected to be $910,000; consequently, the engine ng rate of 14.5% of cost of sales is reasonable. If sales drop, this rate will, of necessity, increase, because

Mr. K. W. Knoll - - 21 Febr[illegible]

Pyronetics requires adequate engineering support to survive.

G & A Rate

Marketing Department costs were $172,094 in 1968, and $150,165 in 1969. 1970 costs are estimated at $1[illegible],000. The need for an adequate selling staff in today's aerospace market is obvious.

General costs (management and accounting) will continue to show improvement. General costs were $1[illegible],325 in 1968, $105,256 in 1969, and are expected to drop to $96,000 in 197[illegible].

Corporate assessments are estimated at $59,000 for 1970. These assessments are uniformly applied to all the operations of The Cosmodyne Corporation, and are based on assets utilized and input to inventory, on a monthly basis.

Thus, the total G & A pool is expected to cost $305,000 in 1970. Based on the estimated cost of sales ($910,0[illegible]) a rate of 33.5% if expected.

DCAA Audit

We understand that the DCAA audit results were different. Our discussion with the auditor included the methods used for rate determination, and we recognize that Government audit procedures are well defined.

We cannot, however, ignore the facts as they appear. We feel duty bound to reiterate that our proposal rates are reasonable, and are accurate, reflecting the best projections we can make. We are fully aware of our duty to disclose the facts, and to present the truth in negotiations.

Planning Hours

Pyronetics proposed 0.93 hours/valve for planning. Average planning per valve experienced in 1969 was 1.[illegible] hours. During negotiations Pyronetics volunteered to reduce its estimated to[illegible].5 hours/valve. The latter estimate is probably more reasonable, because the actual planning time of the planner is spread out over more units; on the other hand, the troubleshooting duties of the planner will continue.

Machine Shop Hours

Pyronetics proposed 7.25/v[illegible]ve for shop labor, and offered to reduce that estimate to 7.00 hours to help get a settlement. The average valve required 6.0[illegible] machine shop hours in [illegible]69, and the most recent job required 6.62. The factors which led us to estimate an increase in shop time include the

tightening of tolerances incorporated this lot of valves, and the probable scrap loss associated with the contin g trend of 347 stainless steel to be defective, which requires replacemer of entire valve body assemblies.

Process and Assembly Hours

Pyronetics proposed 2.58 ho s/valve for processing and assembly. The average valve required 2.24 hour in 1969. We expect an improvement in this element in the current order. Th s improvement, however, is more than offset by the labor required to constr t shorting plugs: shorting plugs were previously purchased outside.

Quality Control Hours

Pyronetics has proposed 5.7 ours/valve for quality control. The average valve required 4.78 hours in 969. QC costs are expected to increase primarily because of tightened tolera es, additional inspection for material leak paths, increased direct source i pection at Space Ordnance Systems and the inspection of shorting plugs m de in-house rather than purchased.

Reliability Hours

Pyronetics has proposed 1.0 ours/valve for reliability; this function includes in-process and end-item tes g. 1969 experience shows 1.27 hours per valve.

Direct Labor Perspective

The direct labor costs discu ed above total $76.59 per valve. 196 average hours, extended to current r es, were $73.84. The increase tightened tolerances, and a more com lete in-house manufacturing capability (offset by some of the reduction in m erial costs).

The lowest cost job experien ed in 1969 (Lot 4A), corrected for increased wage rates, was $66.36 pe valve. This job was blessed by the absence of leakage through the body p rent metal, and did not include the additional work required by the tighte ing of tolerances and a larger in-house manufacturing fraction.

Cost Breakdown

Materials	$248.29
Planning Labor (0.5 hr)	$ 3.75
Machine Shop Labor (7.0 hr	$ 31.41
Process & Assembly Labor (2.58 hr)	$ 10.58
Quality Control Labor (5.71	$ 25.13

Mr. K. W. Knoll

Reliability Labor (1.0 hr)	$ 5.70
Overhead at 180%	$137.86
Factory Cost	$462.74
Engineering at 14.5%	$ 67.10
General at 33.5%	$155.02
Total Cost	$684.86
Profit at 11.1%	$ 76.01
Selling Price	$760.87

Summary

We have offered reasonable a d accurate proposals and cost information. Our position is:

599 valves at $760.87	$455,761.13
45 CATP tests at $54.06	$ 2,432.70
Ammunition data cards for 5" i units at $6.98	$ 3,866.92
Total Price	$462,060.75

Conclusion

We have fired our best shot. We see no value in further meetings.

Very truly yours,

PYRONETICS, INC.
Subsidiary of Cosmodyne

H. F. Eckardt
President

HFE:mt

Rocketdyne
North American Rockwell

6633 Canoga Avenue
Canoga Park, California 91304

11 June 1970

In reply refer to 70RC6334

Bell Aerospace Company
Division of Textron
Buffalo, New York 14240

Attention: Mr. George J. Morris
Procurement Department
Mail Zone T-58

Subject: Revised Cost Proposal for RS-14
Axial Engine Production Follow-on

Reference: (a) Bell Wire GJM:70:05:075 dated 19 May 1970
(b) Bell Wire GJM:70:05:081 dated 22 May 1970
(c) Rocketdyne Proposal 70RC4079 dated 14 April 1970

Gentlemen:

In response to references (a) and (b), we are forwarding as enclosure (1) our firm cost proposal for the delivery of 125 RS14018 Axial Engines. This proposal supersedes reference (c) which required the delivery of 130 engines.

If additional information is required, please contact J. M. Church at (213) 884-2911.

Very truly yours,

NORTH AMERICAN ROCKWELL CORPORATION
Rocketdyne Division

C. W. Guy
Executive Vice President
Rocketdyne

JMC/bem
RC70-307/1

Enc: See Page 2

Enc: (1) Fifteen copies - Cost Proposal
(2) Fifteen copies - DD Form 633's
(3) Fifteen copies - Certificate of Current Cost or Pricing Data
(4) Fifteen copies - Miscellaneous Certifications
(5) Fifteen copies - DD Form 1564
(6) Fifteen copies - DD Form 1423's
(7) Fifteen copies - Cost Supporting Data

cc: Mr. W. M. Brough
Bell Aerospace Company
Los Angeles, California

Form 1005

T W X

Date 9/1/70 Time ___ a.m. Dept. No. 121 Sender George J. Morris RA No. ___

Address:

Canoga Park (City) California (State) TWX: 213-348-2420 (Call Number) NORTH AMERICAN ROCKWELL CORP., ROCKETDYNE DIVISION (Firm Name)

Attention: Mr. John M. Church

Copy to: Messrs. William Brough and James P. Kapp - WPO

Message:

SUBJECT: Bell Advance Purchase Order Number 488320-36 for Axial Engines

Reference:
(A) Bell TWX GJM:70:03:049
(B) Bell TWX GJM:70:05:075
(C) Bell TWX GJM:70:05:081
(D) Bell TWX GJM:70:06:086
(E) Bell TWX GJM:70:08:141
(F) Bell TWX GJM:70:08:158

In reply, refer to: BELL MESSAGE GJM:70:09:175

1. Reference (E) message authorization for the subject requirements is hereby revised to increase funding from One Hundred and Eighty Thousand Dollars ($180,000.00) to Five Hundred and Twenty-Eight Thousand Dollars ($528,000.00). This amount is for the period of performance through 16 October 1970. You are not authorized to make expenditures or incur obligations in excess of this amount in the performance of this authorization, and Bell's liability shall not exceed such amount in the event of termination.

2. Reference (D) and Reference (F) are revised to authorize performance on all tasks as defined in the above referenced messages.

3. The total quantity of deliverable engines is increased from one hundred and twenty-five (125) to one hundred and thirty (130).

4. Reference (E) message is revised to delete Quality Control Clause Number 310 and reinstate Quality Control Clause Number 300.

5. An MR record will be required for ALL CII items as a part of the end item Acceptance Data Packages.

Please TWX receipt and acceptance of this authorization.

George J. Morris, Senior Buyer
Procurement Department

DO NOT TWX CLASSIFIED INFORMATION

Form 0041

T W X

Date _____ Time _____ Dept. No. _____ Sender George J. Morris DA No. _____

Address:

_____ City _____ State _____ Call Number NORTH AMERICAN ROCKWELL ROCKETDYNE DIVISION Firm Name

Attention: _____

Message:

Copies to: Messrs. M. Chazen
R. Cleveland
R. Hendrickson
J. Huber
C. Kessing
H. Koningisor
R. O'Kell
C. Rae
F. Seitz
A. Smith
H. Smith
H. Sommer
D. Spurling
C. Upper
R. Victor
E. Kielbasa
DCAS Office (8 copies)
GJM:File

DO NOT TWX CLASSIFIED INFORMATION

BELL AEROSYSTEMS COMPANY

INTEROFFICE MEMO

February 12, 1970

Memo to: All Buyers

Copy to: Messrs. F. M. Seitz, W. Hamann, J. Kamp, R. Polker, H. Koningisor, J. Muni, C. Rae, L. Wing

Reference: DJI 121-300
Preparation for and Initiation of a Subcontract

Compliance with the reference DJI is mandatory. Negotiations, under no circumstances, are to be conducted until a pre-negotiation position is established and reviewed with cognizant Procurement management.

In addition, effective immediately, all procurement negotiations that fall within the criteria as set forth in the reference DJI will be conducted in Procurement Conference Room 1000. In the event of a conflict, Miss Jeanne O'Neill will arrange for a suitable alternate.

W. H. Cleveland
Assistant Director of Procurement

APPROVED:

F. M. Seitz
Director of Procurement

Union Exh. No. 1

BELL AEROSYSTEMS COMPANY

DEPARTMENTAL JOB INSTRUCTION

NUMBER M9-001
BAPP NO.
PAGE 1 OF 3
DATE ISSUED 30 June 69
DATE REVISED 8 June 1970

ORGANIZATION Manufacturing
DEPT. Equip. Eng.
FACILITY Wheatfield
REF. BAPP

TITLE **MACHINERY AND EQUIPMENT CONTROL**

I. POLICY/SCOPE

In accordance with Company (BAPP) and Armed Services Procurement Regulations (ASPR), adequate inventory records will be maintained to control all company property, and usage records to assure maximum utilization of Government property categorized as industrial plant equipment.

II. RESPONSIBILITIES

A. General

The Manufacturing Department will maintain and administer, in accordance with sound commercial business practices, a program for the utilization maintenance, repair, protection and preservation of Industrial Plant Equipment so as to assure its availability and usefulness for the accomplishment of in-house contracts.

B. Manufacturing Equipment Engineering

1. Prepare and/or investigate (for other functional groups) all Major Expenditure Requests (BAC 0377) (MER) for machinery and related production equipment.
2. Prepare specifications as required. Evaluate and prepare Purchase Requisitions for approved machinery and equipment MER's and Sales Orders (Facility Contracts).
3. Coordinate efforts of Plant Layout, Plant Engineering, Procurement, Manufacturing, Maintenance, outside contractors and vendors relative to procurement delivery and installation of equipment.
4. Maintain responsible procurement, receipt, location, inventory and disposition records of Company and Government Industrial Plant Equipment.
5. Coordinate installation or relocation of machinery and related production equipment, including as required, the approvals of the responsible Company and Governmental Agencies.
6. Inventory machinery and related production equipment on a cyclic basis in accordance with BAPP 45-013, Supplement C.
7. Prepare surplus declarations and coordinate shipment of Company and Government machinery and related production equipment.
8. Administer Machine & Equip. Storage Area.
9. Maintain machine tool historical analysis file.
10. Investigate and coordinate in advance major modifications and/or rehabilitation to Company and Government machinery and related production equipment, including as required, the approvals of the responsible Company and Governmental Agencies.
11. Prepare documentation for modernization/replacement of Company and Government machinery and equipment.
12. Provide Manufacturer's Service Engineers as required (for equipment still under warranty or older - as requested by Maintenance).
13. On a monthly basis prepare and distribute to the pertinent manufacturing superintendents Industrial Plant Equipment (IPE) utilization log sheets. Upon

Union Exh. No. 11(1 of 6)

pickup of prior months IPE log sheets, review any questionable items with the responsible superintendent.

14. Submit utilization log sheets to the supervisor of MEE.
15. As required, assist Government representatives in reviewing operations and records as they pertain to control of machinery and equipment.

C. Maintenance

1. Install machinery and related production equipment.
2. Relocate, as required, all machinery and equipment when authorized by M.E.E. Note: This may be accomplished by outside contractors.
3. Report machinery and related production equipment which appears not to have been operated since the last inspection to Manufacturing Equipment Engineering.
4. Inspect and maintain machinery and equipment in accordance with BAPP 40-002.

D. Supervision (Fabrication Areas)

1. Obtain cooperation of personnel in providing a degree of daily machinery and equipment maintenance.
2. Request service from Maintenance for repairs or adjustments which become necessary between scheduled machinery and equipment inspection.
3. On a daily basis indicate equipment usage by posting work order number in the block provided on the log sheet.
4. At month end affix signature to the log sheet and hold for pickup by MEE.
5. Report immediately to Manufacturing Equipment Engineering any idle machinery and equipment.

E. Plant Engineering

1. Coordinate all major departmental relocations with Manufacturing Equipment Engineering.
2. Provide MEE with new or changed departmental layouts and/or plant layout move analysis reflecting machinery and equipment locations.

III. PROCEDURE

A. Maintenance will:

1. In the course of their regularly scheduled inspection (refer BAPP 40-002) report any machinery and equipment which appears not to have been operated since the last inspection to the MEE Supervisor.

BELL AEROSYSTEMS COMPANY

DEPARTMENTAL JOB INSTRUCTION

NUMBER MO-001
BAPP NO.
PAGE 3 OF 3
DATE ISSUED 20 June 69
DATE REVISED 8 June 1970

ORGANIZATION Manufacturing FACILITY Wheatfield
DEPT. Equip. Eng. REF. BAPP

TITLE **MACHINERY AND EQUIPMENT CONTROL**

2. Upon receipt of a Maintenance Service Request (MSR) (BAC 1162) to relocate machinery and equipment:
   a. Check for MEE authorization signature prior to moving item (see following note)
   b. Relocate item and
   c. Send copy MSR to MEE on completed relocations.
3. Upon receipt of a Plant Equipment Request and layout drawing of a major relocation
   a. Check for MEE signature prior to departmental relocation (see following note)
   b. Relocate department

NOTE: No machinery and equipment will be moved without prior MEE signature attesting to their knowledge of the move.

B. Manufacturing Equipment Engineering Supervisor or his designate will:

1. Sign all MSR's and plant layout drawings, prior to move, attesting to knowledge of the relocation of machinery and equipment.
2. Upon receipt of the MSR's and marked-up plant layouts indicating that relocations have been completed, direct changes to be made to equipment location records to reflect new location.
3. Upon receipt of the monthly utilization log sheets take the following action:
   a. Review actual usage of each machinery and equipment item.
   b. If any items reviewed indicate a downward trend in the level of utilization contact the Director of Manufacturing.

C. The Director of Manufacturing will:

1. Contact Project Management to ascertain if production schedules for certain programs will increase or decrease.
2. Contact Marketing relative to new business currently in process
3. Advise Manufacturing Equipment Engineering as to course of action.

D. Manufacturing Equipment Engineering Supervisor will:

1. If future schedule or new business commitments indicates retention prepare, as required, the necessary substantiation statements for I.P.E.
2. If future schedules or new business commitements do not indicate an increase in the utilization of the particular machine family coordinate surplusing action with Manufacturing Fabrication Supervision.
3. Surplus in accordance with BAPP 45-013, Supplement C or BAPP 15-003.
4. Maintain file of utilization log sheets and action taken on all I.P.E. reflecting a drop in utilization.

DUTIES & RESPONSIBILITIES OF MACHINERY AND EQUIPMENT SECTION PLANNERS.

PLANNERS: Charles B. Rowe and Stanley W. Lochocki

(1) Production Engineering (Machinery and Equipment Section) will investigate all requests for all equipment with the exception of office furniture. This includes machine tools, production equipment, benches, racks, bins, material handling equipment, laboratory and test equipment, and portable tools. (See attached procedure for purchase requisition authorization).

(2) Maintain responsibility, utilization, and location records of all equipment. (Air Force requirement)

(3) Issue purchase requisitions for all equipment and maintain status and receiving record of same.

(4) Initiate P.E.R.'s, Move Orders, and M.S.O.'s for movement, installation, or transfer of all equipment (See #2) and coordinate with Plant Layout.

(5) Initiate action for the maintenance and repair of all equipment and maintain records of repair work done, lost time, and costs.

(6) Prepare capital budget estimates as related to Machinery and Equipment requirements and control and audit same upon approval.

(7) Investigate and prepare Production Engineering estimates on new projects of increased schedule requirements for Manufacturing, Quality and Test Divisions and upon approval support procurement function.

(8) Investigate, prepare, and submit Facilities and Supply Contract Appendices and Supplements to Contracts Division and support and coordinate with that divisinn in order to gain approval from governmental agencies.

(9) Investigate and submit requirements as indicated to Long Range Planning and Estimating Department for new projects.

(10) Determine Manufacturing, Quality, and Test Department requirements specifications through coordinated efforts with supervisors of those departments.

(11) Justify expenditure of capital and overhead funds and administer same after approval.

(12) Coordinate efforts of Plant Layout, Methods Improvement, Plant Engineering, Maintenance, outside contractors and vendors relative to procurement, delivery, and installation of projects.

(13) Assist in instruction of employees on unfamiliar equipment and coordinate the development of personnel training programs.

(14) Coordinate with vendors regarding details of specifications, design, quotations, delivery and installation of equipment.

(15) Inspect and evaluate surplus government plants and equipment (stock listed and non-stock listed) relative to project program requirements. Supply data (adaptability and justification) and process with Contracts Division to proper governmental agencies in an attempt to procure same. (Air Force Requirement)

(16) Investigate requirements and prepare specifications for specialized equipment.

(17) Maintain Air Force Historical Records. When equipment is declared surplus, Department Supervisor must be contacted and if not justified surplus action taken. A 51 Form must be made and brought up to date, adding information which was not required on old 51 forms, such as motor data, new commodity code, accessories, etc. Machine information must be checked against machine if necessary. All accessories must be located & identified with tags and placed with machine. Machine REpair Request must be written to have Machine cleaned and preserved per Military Specifications, prior to disconnecting and moving to shipping area for skidding. Skid orders must be requested from shipping for each Machine. When machine is shipped, Historical Records & form DD-250 must be delivered o to Air Force Office within 24 hours of shipment. Machines, plant cleared & sold or scrapped must have tags removed & delivered to Asset Records. Air Force Utilization Reports are made monthly to Air Force Office showing number of days per month Air Force Equipment is being used. This is a visual and personal check made by personnel of Machinery & Equipment Group.

(18) If, for any reason outside Vendors must come in the Plant, Machinery & Equipment people escort these people to machine and if necessary remain with them until work or survey is completed.

(19) Sales Orders issued by Contracts Department regarding Air Force Equipment must be processed. Equipment must be located, and processed as outlined above.

ATTACHMENT

Procedure for Ordering Machinery and Equipment

When new equipment is required to complete current or new projects and/or contracts, the department head requiring the equipment will prepare an appropriation request (BAC Form A6-57).

The Machinery and Equipment Section will act as an investigating department to establish the need and/or availability of the equipment in present facilities and also determine whether an item is applicable to a facility or supply contract or if it must be budgeted as a capital expenditure. This section will also be responsible to secure the appropriate authorized signatures. When the proper signatures are obtained, this will constitute authority to issue a purchase requisition to buy the equipment. A purchase requisition will be prepared by the Machinery and Equipment Section and authorized by the Production Engineering Manager or his designated personnel.

The following is the proper distribution of the four copies of the appropriation request: Two copies will be forwarded together with the purchase requisition to the Accounting Department for their records, one copy will be sent to the Administrative Program Department, one copy will be sent to appropriate contracts department for their records.

The purchase requisition number and date issued will be indicated on all appropriation requests.

The Accounting Department will forward the purchase requisition and one copy of the appropriation request to Assets Records to have the proper U. S. Air Force identification number put on the requisition. The Assets Records Section will forward the purchase requisition to the Purchasing Department for issuance of a purchase order. A copy of the purchase order will be sent to the Machinery and Equipment Section for follow up.

The appropriation request (BAC Form A6-57) when issued against a government contract will be signed in Section IX by the Senior department head. The appropriation request will then be signed by the appropriate contracts administrator (one copy).

When the request is issued for a capital expenditure item the Division Manager will sign the approval in Section XIV and the comptroller will sign the authorization.

Union Exhibit No. 121 (of 121)

Extron

PURCHASE REQUISITION/PURCHASE ORDER/RECEIVING REPORT

P1V

P.O. NO 024091

BILL — LETTERHEAD ADDRESS AND UNLESS OTHERWISE STATED
SHIP TO — WHEATFIELD PLANT
NIAGARA FALLS BLVD
NIAGARA FALLS N Y

REQUIREMENT REFERENCE NO NIR S/N 69106

LINE NO	QUANTITY	U/M	PART NO	DESCRIPTION						
1	1			Modified Electron Beam Welder, Model NHV (6) 523634, with a universal rotary fixture modified to provide a speed range of .12 to 100 RPM, and having all required features and capabilities to effect operations similar to S/N 301 machine, purchased on Bell P.O. 595009-1, dated 5-29-67.					105,000-	
2	1			Motor Generator Set to stabilize input power.					3,650-	
3	1			Automatic vacuum sequencing system.					3,760-	
4	1			Beam On-Off Variable Taper Control					4,300-	
5	1			Modified Eccentric Table to generate a circle from 0" to 2" dia. and provide rotary speed up to a maximum of 120 RPM					4,450-	

(CONTINUED - Page 2)

QC CLAUSES — SUBJECT TO AT RECEIVING INSPECTION

AUTHORIZED SIGNATURE

TOTAL

C. J. Metz 5-31-69 CSL J. Smith/J. P. Domino Dept. 590 C

BUYER NAME

17

THIS IS A PURCHASE ORDER WHEN P.O. NO IS ENTERED AND APPROVED BUYER SIGNS BELOW

Hamilton Standard
Division of United Aircraft Corporation
Windsor Locks, Connecticut.

APPROVAL SIGNATURES STAMPS AND DATES

DEPT
AUTH
QUALITY
AUTH
PLT

ACCOUNT NO

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bell AEROSYSTEMS A textron COMPANY

PURCHASE REQUISITION/PURCHASE ORDER/RECEIVING REPORT

P.O. DATE

P.O. NO. C0[illegible]

CHANGE INFORMATION

COPR NO
COPO NO
CANCEL
DELIVERY
OTHER

REQUIREMENT REFERENCE NO.

VENDOR NO

INVENTORY TAG

F.O.B.

PRICE & DELIVERY PER YOUR

AN ENTRY BELOW CONFIRMS OUR ORDER PLACED.

BILL — LETTERHEAD ADDRESS AND UNLESS OTHERWISE STATED.
SHIP TO — WHEATFIELD PLANT
NIAGARA FALLS BLVD.
NIAGARA FALLS, N. Y.

MAP NO.

ESTABLISHED ROUTING UNLESS OTHERWISE STATED

SHIP VIA

ITEM	QUANTITY	U/M	PART NO.	DESCRIPTION	ORDER UNITS	CONV CODE	COST PER	REQUIRED DATE	SCHEDULED DELIVERY DATE	UNIT PRICE	EXTENSION
6	1			Beam Timer with a dual range of 20 seconds and 120 seconds with dial divisions of .1 second. To be interconnected with the beam footswitch.							1,2[illegible]
7	1			Vernier Bias Control System							1,3[illegible]
8	1			Shunt Package consisting of required wiring and jacks to plug in a Texas Instrument Visicorder II, 3 channel strip chart recorder. It shall furnish signals to the recorder for voltage, beam current and focus current. A complete set of schematics and wiring diagrams of this installation shall be furnished at time of delivery. (CONTINUED - Page 3)							3,[illegible]

Q.C. CLAUSES

SUBJECT TO — AT RECEIVING INSPECTION

AUTHORIZED SIGNATURE

TOTAL

BUYER

NAME

DATE

C. J. Pots 5-14-69 DATE C-24 DEPT. J. Smith/J. Donine LOCATION Dept. 590 CRIB MAP CODE

Hamilton Standard.

APPROVAL SIGNATURES STAMPS AND DATES

DEPT.
AUTH.
QUALITY
AUTH.
REP.
PROJECT
ACCOUNTING

THIS IS A PURCHASE ORDER WHEN P.O. NO. IS ENTERED AND APPROVED BUYER SIGNS BELOW

BUYER NO.

SUGGESTED SOURCE
SPECIAL INSTRUCTIONS
ESTIMATED COST

EXPLAIN IN DETAIL WHERE ITEM(S) WILL BE USED

INFORMATION TO ASSIST IN DETERMINING QUALITY CONTROL CLAUSE(S)

ORIGINATOR COPY

Extron COMPANY

PURCHASE REQUISITION/PURCHASE ORDER/RECEIVING REPORT

PO NO 024,092 Page #3

PR NO 024144

BILL — LETTERHEAD ADDRESS AND UNLESS OTHERWISE STATED
SHIP TO — WHEATFIELD PLANT
NIAGARA FALLS BLVD.
NIAGARA FALLS, N. Y.

QUANTITY	U M	PART NO	DESCRIPTION	TOTAL PRICE
			The viewing scope shall be the same power, style and have the same reticle divisions as the scope furnished with S/N 269 Welder, except graduations shall extend in the X and Y directions, instead of only X. This is in accordance with commitment made by Mr. Olaf Olsen of Hamilton Standard.	
			This machine shall meet all conditions itemized in your quote Q69-43-1, dated 3/21/69, and individual Hamilton Standard specification sheets identified as additional pages of Q69-43-1 and attached hereto as part of Bell Purchase Order. Exceptions to said specifications are itemized in the following "NOTES."	

Q C CLAUSES

SUBJECT TO — AT RECEIVING INSPECTION

AUTHORIZED SIGNATURE

TOTAL

BUYER G. J. Nats DATE 5-14-69 CODE C5L FOR J. Smith/J. Donine Hamilton Standard

LOCATION Dept. 590 CHG TYP E

BUYER NAME DATE NO 27

THIS IS A PURCHASE ORDER WHEN P.O. NO. IS ENTERED AND APPROVED BUYER SIGNS BELOW

BUYER NO

SUGGESTED SOURCE
SPECIAL INSTRUCTIONS
ESTIMATED COST

EXPLAIN IN DETAIL WHERE ITEM(S) ARE TO BE USED

INFORMATION TO ASSIST IN DETERMINING QUALITY CONTROL LEVEL

APPROVAL SIGNATURES STAMPED AND DATED

DEPT AUTH
PROJECT
QUALITY AUTH
ACCOUNTING
REP

ORIGINATOR COPY

AIRSYSTEMS A extron COMPANY

PURCHASE REQUISITION/PURCHASE ORDER/RECEIVING REPORT

P.O. NO. 026792 Page #4

P.R. NO. 1024175

CHANGE INFORMATION
COPR NO
COPO NO
CANCEL
DELIVER
OTHER

BILL — LETTERHEAD ADDRESS AND UNLESS OTHERWISE STATED
SHIP TO — WHEATFIELD PLANT
HIAGARA FALLS BLVD
NIAGARA FALLS, N. Y.

REQUIREMENT REFERENCE NO

VENDOR NO

INVENTORY TYPE

QUANTITY	U/M	PART NO	DESCRIPTION	TOTAL PRICE
			The welding chamber shall be 52" wide, 36" deep and 36" high, with a clear work area of 52" x 36" x 27" high, from top of table to ceiling of cabinet. The work table travel is 25½" in X direction, and 17" in the Y direction. The table size is 25½" x 17" of heavy duty construction to adequately manipulate up to 1,000 lbs.	
			The timer, adjustable beam programming device (Item 6 of P.O.) shall start timing from the instant the beam is put on, thereby including up slope in the time cycle. When timer "times out", the signal for down slope will be initiated.	

Q C CLAUSES

SUBJECT TO — AT RECEIVING INSPECTION

AUTHORIZED SIGNATURE

DATE

LOCATION

BUYER

NAME

APPROVAL SIGNATURES STAMPS AND DATES

DEPT

AUTH

QUALITY

AUTH

BY

PROJECT

ACCOUNT NO

5-24-65

THIS IS A PURCHASE ORDER WHEN THIS NO. IS ENTERED AND APPROVED BY BUYER SIGNS BELOW

BUYER

NO.

Union Exh. No. 12A (1)

AMERICAN SYSTEMS A Textron COMPANY

PURCHASE REQUISITION/PURCHASE ORDER/RECEIVING REPORT

021-221 Page #5

024116

BILL — LETTERHEAD ADDRESS AND UNLESS OTHERWISE STATED
SHIP TO — WHEATFIELD PLANT
NIAGARA FALLS BLVD
NIAGARA FALLS, N Y

ESTABLISHED POLICIES UNLESS OTHERWISE STATED.

QUANTITY	U/M	PART NO	DESCRIPTION
			NOTES:
			(a) The timing system shall be wired in the same manner as machine, S/N 301, which permits simulating a run without setting CV or gun.
			(b) Work table shall be of heavy duty design having five stitch points to furnish maximum stability, similar to machine S/N 301.
			(c) Three (3) complete sets of operating and maintenance manuals shall be furnished, including all drawings, and schematics covering modifications, interconnection of N.C. sets and complete maintenance instructions of all accessories and equipment manufactured by others.
			(CONTINUED ON PAGE #6).

O. J. Nels — C54 — J. Smith/J. P. Downe — Dept. 590 — 17

A PURCHASE ORDER WHEN SIGNED IS ENTERED AND APPROVED BY SIGNS BELOW

Hamilton Standard.

PURCHASE REQUISITION/PURCHASE ORDER/RECEIVING REPORT

extron COMPANY

BRANT

BILL — LETTERHEAD ADDRESS AND UNLESS OTHERWISE STATED
SHIP TO — WHEATFIELD PLANT
NIAGARA FALLS BLVD
NIAGARA FALLS, N. Y

QUANTITY	U M	PART NO	DESCRIPTION
			(d) At the discretion of Bell Aerosystems, this machine may be inspected, in operation, at the Hamilton Standard Facility, before shipment to Bell. Hamilton Standard to notify Bell when available for inspection.
			(e) Machine shall be arranged to operate on 460 volt, 3 phase, 60 HZ service.
			(f) The mechanical pumps shall be isolated from the machine by nyloc couplings to impart a minimum of vibration to the work table.
			(g) There shall be no compression shift in table or work positioning equipment when the access doors are closed and vacuum is drawn.
			(h) The cooling water piping system shall be so designed as to eliminate interaction of the drain lines from mechanical pump and diffusion pump.

(CONTINUED ON PAGE 27)

Q. J. Metz — CSK — J. Smith/J. Domino — Dept. 590

THIS IS A PURCHASE ORDER WHEN P.O. NO. IS ENTERED AND APPROVED

Hamilton Standard

27

AEROSYSTEMS
A extron COMPANY

PURCHASE REQUISITION/PURCHASE ORDER/RECEIVING REPORT

PO NO 824071 Page 17

PO NO 824078

BILL — LETTERHEAD ADDRESS AND UNLESS OTHERWISE STATED
SHIP TO — WHEATFIELD PLANT
NIAGARA FALLS BLVD
NIAGARA FALLS, N. Y

CHANGE NOTICE NO
COPO NO
COPO NO
CANCEL
DELIVERY
OTHER

REQUISITION REFERENCE NO

VENDOR NO

INVENTORY TYPE

QUANTITY	U/M	PART NO	DESCRIPTION	TOTAL PRICE
			(h) continued:	
			This will prevent restrictions in the lines and allow free flows from all	
			sources.	
			(i) Per Hamilton Standard specifications, Vacuum System shall consist of a	
			300 CFM mechanical forepump, 10 in. 4200 l/s fractioning oil diffusion pump	
			and 35 CFM mechanical pump booting in diffusion pump. All necessary valves,	
			operating in proper sequence and timing shall be automatic, in accord with	
			Item f) of this Purchase Order.	
			(j) At the time of delivery of this machine, a factory field engineer will	
			assist in its installation and check-out and instruct Bell personnel in its	
			operation and maintenance.	

Q C CLAUSES

SUBJECT TO — AT RECEIVING INSPECTION

AUTHORIZED SIGNATURE

BUYER

NAME

DATE

NO 17

G. J. Nota

DEPT 054

PCA J. Smith/J. Donino

LOCATION Dept. 590

THIS IS A PURCHASE ORDER WHEN NO IS ENTERED AND APPROVED BUYER SIGNS BELOW

BUYER NO

Hamilton Standard.

APPROVAL SIGNATURES STAMPS AND DATES

DEPT

AUTH

PROJECT

QUALITY

AUTH

ACCOUNTING

REP

ORIGINATOR COPY

247

-30-

Union Exh. No. 12(7 of 12)

AEROSYSTEMS A BELL AEROSPACE COMPANY

PURCHASE REQUISITION / PURCHASE ORDER/RECEIVING REPORT

PO NO

PO DATE

PAGE 1 OF 2 PAGES

REQUISITIONER

FOB

MAIL & DELIVERY REFERENCE

ARE DATES BELOW CONFIRMED OUR ORDER PLACED

CHANGE INFORMATION

COPY NO

COPO NO

CANCEL

DELIVERY

OTHER

AWARD CODE

BILL — LETTERHEAD ADDRESS AND UNLESS OTHERWISE STATED

SHIP TO — WHEATFIELD PLANT
NIAGARA FALLS BLVD.
NIAGARA FALLS, N. Y.

[MAP NO. 10]

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ESTABLISHED ROUTING UNLESS OTHERWISE STATED

REQUIREMENT REFERENCE NO

VENDOR NO

INVENTORY TYPE

ITEM NO	QUANTITY	U/M	PART NO	DESCRIPTION	VENDOR QUOTE	COST CODE	COST DATA	REQUIRED DATE	SCHEDULED DELIVERY DATE	UNIT PRICE	PER	TOTAL PRICE
				(k) All electrical apparatus of this facility must comply with J.I.C. specs.								
				(l) Final acceptance shall be made after complete installation at Bell Aerosystems Wheatfield Plant, and machine is in full operation, making the weld detailed on Page 069-43-13 to the satisfaction of Bell Quality Dept. This assembly consists of a Columbium -1% Zirconium injector E.B. welded to a liner, SCB-591 (80% Columbium, 10% Tantalum, 10% Tungsten.)							
				(m) Purchasing Department to route copy of Purchase Order to Primary Standards, Dept. 677, to assure certification on instrumentation after installation of equipment.							
				(CONTINUED ON PAGE #9)								

Q. C. CLAUSES

SUBJECT TO — AT RECEIVING INSPECTION

AUTHORIZED SIGNATURE

TOTAL

ORIGINATOR

DEPT

TOOL

FOR

LOCATION

CHG

TAX CODE

BUYER

NAME

DATE

G. J. Nets

054

J. Smith/J. Domino

Dept. 590

THIS IS A PURCHASE ORDER WHEN P.O. NO. IS ENTERED AND APPROVED BUYER SIGNS BELOW

SUGGESTED SOURCE

SPECIAL INSTRUCTIONS

ESTIMATED COST

Hamilton Standard.

EXPLAIN IN DETAIL WHERE ITEM(S) WILL BE USED

INFORMATION TO ASSIST IN DETERMINING QUALITY CONTROL CLAUSE(S)

APPROVAL SIGNATURES STAMPS AND DATES

DEPT

PROJECT

AUTH

QUALITY

ACCOUNT NO

AUTH

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A extron COMPANY

PURCHASE REQUISITION/PURCHASE ORDER/RECEIVING REPORT

C21-592 PAGE 49

DRAWN

BILL — LETTERHEAD ADDRESS AND UNLESS OTHERWISE STATED
SHIP TO — WHEATFIELD PLANT
NIAGARA FALLS BLVD
NIAGARA FALLS, N. Y

ESTABLISHED ROUTING UNLESS OTHERWISE STATED

LINE NO	QUANTITY	U/M	PART NO	DESCRIPTION	WORK ORDER	COST CODE	COST DATE	REQUIRED DATE	SCHEDULED DELIVERY DATE	LAST PRICE PAID/CHARGE	T.T. TAX	TOTAL PRICE
				(n) Price to include a selective training course lasting one (1) week, for maintenance people and operators.								
				(o) One Auxiliary Cannon plug shall be installed within the chamber to power Bell tooling, at no additional charge, per wire of Mr. O. Olsen of 3-19-69 and quote.								
				(p) The variable speed of the universal rotor fixture, from .12 to 100 RPM shall have a Plus/Minus 1% accuracy of regulation over entire range.								
				(q) Digital readout dials are required for all power inputs to electron beam gun and focusing lens (except beam current control) to insure accurate reproduction of welding parameters.								

Q C CLAUSES

SUBJECT TO AT RECEIVING INSPECTION

AUTHORIZED SIGNATURE

TOTAL

G. J. Metz — DATE — CODE — FOR J. Smith/J. Donino — LOCATION Dept. 590 — CODE — NAME CODE — BUYER — DATE — NAME — 17

THIS IS A PURCHASE ORDER WHEN P.O. NO IS ENTERED AND APPROVED BUYER SIGNS BELOW

Hamilton Standard.

BUYER NO

APPROVAL SIGNATURES STAMPS AND DATES

DEPT AUTH — PROJECT

QUALITY AUTH REP — ACCOUNT NO

BELL AEROSYSTEMS COMPANY
Textron

P... HA... EQU...TION... PURCHASE ORDER/RECEIVING REPORT

D2M124

CHANGE INFORMATION
COPE NO
COPD NO
CANCEL
DELIVERY
OTHER

BILL — LETTERHEAD ADDRESS AND UNLESS OTHERWISE STATED.
SHIP TO — WHEATFIELD PLANT
NIAGARA FALLS BLVD.
NIAGARA FALLS, N. Y.

ESTABLISHED ROUTING UNLESS OTHERWISE STATED

QUANTITY	U/M	PART NO	DESCRIPTION
			(r) Machine finish shall match that supplied on S/N 301, S/N 269, and S/N 243.
			(s) All safety requirements of New York State and Bell Aerosystems must be observed. No radiation levels shall exist, if an individual is consistently present in the area, could result in his receiving a dose in excess of 2.0 MILLIRENS in any one hour, or if an individual is consistently present in the area, could result in his receiving a dose in excess of 100 MILLIRENS in any seven (7) consecutive days.
			(t) Interior chamber surfaces shall have a #63 microinch finish or better.
			(u) All moving parts shall have readily accessible provisions for adequate lubrication.

VENDOR NO
INVENTORY TYPE
TOTAL PRICE

Q. C. CLAUSES
SUBJECT TO — AT RECEIVING INSPECTION
AUTHORIZED SIGNATURE
TOTAL

O. J. Nets — DATE — FOR C54 — FOR J. Smith/J. Domino — LOCATION Dept. 590 — BUYER NAME — DATE — 17

THIS IS A PURCHASE ORDER WHEN P O NO IS ENTERED AND APPROVED BUYER SIGNS BELOW
BUYER — NO

SUGGESTED SOURCE Hamilton Standard.
SPEC & INSTRUCTIONS
ESTIMATED COST
EXPLAIN IN DETAIL WHEN ITEMS ARE NOT USED
IMPORTANT DATA USED IN DETERMINING

APPROVAL SIGNATURES STAMPS AND DATES
DEPT
AUTH
QUALITY
AUTH
REP
PROJECT
ACCOUNT NO

-33-

Union Exh. No. 12 (10 of 12)

250

AEROSYSTEMS A Unit of Company

PURCHASE REQUISITION / PURCHASE ORDER/RECEIVING REPORT

P.O. DATE

P.O. NO. 026091 Page 1

P.R. NO. BRANDS

PRIORITY RATING CERTIFIED UNDER DMS REG. 1 | TERMS | F.O.B.

CHANGE INFORMATION

WE'LL DELIVER PER YOUR | AN ENTRY BELOW CONFIRMS OUR ORDER PLACED.

CODE NO / COPO NO / CANCEL / DELIVERY / OTHER

REQUIREMENT REFERENCE NO.

AMARC CODE

BILL — LETTERHEAD ADDRESS AND UNLESS OTHERWISE STATED.
SHIP TO — WHEATFIELD PLANT
NIAGARA FALLS BLVD.
NIAGARA FALLS, N. Y.

ESTABLISHED ROUTING UNLESS OTHERWISE STATED

SHIP VIA

VENDOR NO | INVENTORY TYPE

ITEM NO	QUANTITY	U/M	PART NO	DESCRIPTION	NEED QUOTE	COST CODE	COST DATA	REQUIRED DATE	CONFIRMED DELIVERY DATE	UNIT PRICE PER HUNDRED THOUSAND	P.E.	TOTAL PRICE
				(v) All replaceable parts shall be manufactured to definite standards for tolerance, clearance, and finish, in order that any such part may be field installed without further machining. Where possible, all parts shall be permanently and legibly marked with the manufacturer's part number.							
				(w) The entire system shall be certified to meet all FCC regulations.							
				(x) With reference to Item #8 of P.O., the Texas Instruments recorder will accept current input resistances of 200,000 ohms per volt, and a 40 millivolt signal as specified in Hamilton Standard Quote No. 669-43-1.							
				(y) Installation drawings to be received thirty (30) days after receipt of Purchase Order.							

Q.C. CLAUSES | SUBJECT TO — AT RECEIVING INSPECTION | AUTHORIZED SIGNATURE | TOTAL

ORIGINATOR: G. J. Nota | DATE | TOOL: C5h | BUY: J. Smith/J. Donine | LOCATION: Dept. 590 | CODE | SUB CODE | BUYER | NAME | DATE | NO. 17

THIS IS A **PURCHASE ORDER** WHEN P.O. NO. IS ENTERED AND APPROVED BUYER SIGNS BELOW

BUYER _____ NO _____

SUGGESTED SOURCE (FOR ALTERNATIONS ESTIMATES ONLY)

Hamilton Standard.

APPROVAL SIGNATURES STAMPS AND DATES

DEPT AUTH | PROJECT

QUALITY AUTH

REP | ACCOUNTING

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47

SAC 2740 Rev. 12-68

COPY NOT TO SCALE

-34- Union Exh. No. 12 (11 of 12)

251

BELL AEROSYSTEMS A Textron COMPANY

PURCHASE REQUISITION/PURCHASE ORDER/RECEIVING REPORT

P O DATE

P O NO 021771 Page 12

P R NO 021827

TERMS

F O B

CHANGE INFORMATION

COPS NO

COPO NO

CANCEL

DELIVERY

OTHER

REQUIREMENT REFERENCE NO

VENDOR NO

INVENTORY TYPE

AN ENTRY BELOW CONFIRMS OUR ORDER PLACED

BILL — LETTERHEAD ADDRESS AND UNLESS OTHERWISE STATED.
SHIP TO — WHEATFIELD PLANT
NIAGARA FALLS BLVD.
NIAGARA FALLS, N. Y.

ESTABLISHED ROUTING UNLESS OTHERWISE STATED

QUANTITY	U/M	PART NO	DESCRIPTION	REQUIRED DATE	TOTAL PRICE
			(z) A certified inspection sheet, listing the test results, shall be furnished to Bell Aerosystems Company, prior to shipment of the machine.		
			(AA) Warranty on all parts shall extend for a period of one (1) year from date of acceptance of machine at Bell Aerosystems Company.		

Q C CLAUSES

SUBJECT TO — AT RECEIVING INSPECTION

AUTHORIZED SIGNATURE

TOTAL

ORIGINATOR

DATE 5.21.69

TO/ATTN O. J. Nota

FOR C5L J. Smith/J. Devino

LOCATION Dept. 590

CRIB

BUYER

DATE

NAME

17

THIS IS A PURCHASE ORDER WHEN P O NO. IS ENTERED AND APPROVED BUYER SIGNS BELOW

BUYER NO

SUGGESTED SOURCE Hamilton Standard
SPECIAL INSTRUCTIONS
ESTIMATED COST

EXPLAIN IN DETAIL WHERE TERMS ARE TO BE USED

INFORMATION TO ASSIST IN DETERMINING WHETHER CONTRACT CLAUSES ARE REQUIRED

APPROVAL SIGNATURES STAMPS AND DATES

DEPT
AUTH
QUALITY
AUTH
REP

PROJECT

ACCOUNTING

ORIGINATOR COPY

PURCHASE ORDER

DATE 7/29/69

P.O NO. 4972UU-17

(B) - BELL AEROSYSTEMS COMPANY AT; (S) - SHIP TO

[ ] B LETTERHEAD ADDRESS

[ ] S WHEATFIELD PLANT NIAGARA FALLS BLVD. NIAGARA FALLS, N.Y.

[ ]

AWARD CODE: 4.1L

Hamilton Standard Division
United Aircraft Corporation
Windsor Locks, Conn.

TERMS	REQMT REF NO.	P.R. NO.
N30	MER S/N 69106	02409

F.O.B.	WORK ORDER	COST CODE	COST ELEM
Windsor Locks, Conn.	341		

SHIP VIA [X] ESTABLISHED ROUTING

GOV'T CONTRACT NO.

PRIORITY RATING

FOR: J. Smith/J. P. Domino

AT: Dept. 590, Code C

ITEM NO	QUANTITY	U/M	BELL PART NO./DESCRIPTION MER #69106, Bell C-25557	REQ'D DATE	UNIT PRICE	TOTAL PRICE
1	1		Modified Electron Beam Welder, Model EBW (6) 523636, with a universal rotary fixture modified to provide a speed range of .12 to 100 RPM, and having all required features and capabilities to effect operations similar to S/N 301 machine, purchased on Bell P. O. 595009-1, dated 5/29/67,		97,570 00	97,570 00
2	1		Motor Generator Set to stablize input power.		3,650 00	
3	1		Automatic vacuum sequencing system.		3,260 00	
4	1		Beam On-Off Variable Taper Control		4,300 00	
5	1		Modified Eccentric Table to generate a circle from 0" to 2" dia. and provide rotary speed up to a maximum of 120 RPM		4,450 00	
6	1		Beam Timer with a dual range of 20 seconds and 120 seconds with dial divisions of .1 second. To be interconnected with the beam foot-switch.		1,250 00	
7	1		Vernier Bias Control System (CONT.)		1,350 00	

VENDOR DELIVERY SCHEDULE			
ITEM NO	QTY/DATE	ITEM NO	QTY./DATE
Before 8/4/69			

LOCATION

BUYER NO. 17

VENDOR NO. 49141

TOTAL $97,570 00

-36-

253

Union Exhibit No. 13(1 of 9

Page 4 of 7 — PURCHASE ORDER — DATE 7/29/69 — P.O NO. 297200-17

(C) - BELL DEL. ADDRS. STEMS COMPANY AT; (S) - SHIP TO

☐ LETTERHEAD ADDRESS ☐ WHEATFIELD PLANT NIAGARA FALLS BLVD. NIAGARA FALLS, N.Y. ☐

AWARD CODE

Hamilton Standard Division

TERMS | BOMAT REF NO. | P.R. NO. 02409-

F.O.B. | WORK ORDER | COST CODE | COST ELEM

SHIP VIA ☐ ESTABLISHED ROUTING _____ _____

GOV'T CONTRACT NO.

PRIORITY RATING

FOR | AT

ITEM NO	QUANTITY	U/M	BELL PART NO./DESCRIPTION	REQ'D DATE	UNIT PRICE	TOTAL PRICE
8	1		Shunt Package consisting of required wiring and jacks to plug in a Texas Instrument Visicorder II, 3 channel strip chart recorder. It shall furnish signals to the recorder for voltage, beam current and focus current. A complete set of schematics and wiring diagrams of this installation shall be furnished at time of delivery.		3,620 00	
9	1		Viewing scope to be the same power, style and have the same reticle divisions as the scope furnished with S/N 269 Welder, except graduations shall extend in the X and Y directions, instead of only X. This is in accordance with committment made by Mr. Olaf Olsen of Hamilton Standard.		550 00	
			This machine shall meet all conditions itemized in your quote Q69-43-1, dated 3/21/69, and individual Hamilton Standard specification sheets identified as additional pages of Q69-43-1. Exceptions to said specifications are itemized in the following "NOTES." (CONT.)			

VENDOR DELIVERY SCHEDULE

ITEM NO	QTY./DATE	ITEM NO	QTY./DATE

LOCATION | BUYER NO. 17 | VENDOR NO. 49141 | TOTAL $120,000 00

-37-

Union Exh. No. 13(2 of 9)

254

(3)

PURCHASE ORDER

DATE 7-...-69 P.O. NO. -972[illegible]-7

(B) - BELL AEROSYSTEMS COMPANY AT; (S) - SHIP TO

☐☐ LETTERHEAD ADDRESS ☐☐ WHEATFIELD PLANT NIAGARA FALLS BLVD. NIAGARA FALLS, N.Y. ☐☐

TERMS | BOMT REF NO. | P.R. NO. 024097

F.O.B. | WORK ORDER | COST CODE | COST ELEM

AWARD CODE

Hamilton Standard Division

SHIP VIA ☐ ESTABLISHED ROUTING

GOV'T CONTRACT NO.

PRIORITY RATING

FOR | AT

ITEM NO	QUANTITY	U/M	BELL PART NO./DESCRIPTION	REQ'D DATE	UNIT PRICE	TOTAL PRICE
			The welding chamber shall be 52" wide, 36" deep and 36" high, with a clear work area of 52" x 36" x 27" high, from top of table to ceiling of cabinet. The work table travel is 25½" in X direction, and 17" in the Y direction. The table size is 25½" x 17" of heavy duty construction to adequately manipulate up to 1,000 lbs. The timer, adjustable beam programming device (Item 6 of P. O.) shall start timing from the instant the beam is put on, thereby including up slope in the time cycle. When timer "times out", the signal for down slope will be initiated. NOTES: (a) The timing system shall be wired in the same manner as machine, S/N 301, which permits simulating a run without setting KV or gun. (b) Work table shall be of heavy duty design having firm attach points to furnish maximum stability, similar to machine S/N 301.	(CONT.)		

VENDOR DELIVERY SCHEDULE

ITEM NO	QTY/DATE	ITEM NO	QTY./DATE

LOCATION | BUYER NO. 17 | VENDOR NO. 49141 | TOTAL

-38-

255

Union Exh. No. 13 (3 of 9)

Page of PURCHASE ORDER DATE 11/29/69 P.O. NO. 297200-17

(S) - BELL AEROSYSTEMS COMPANY AT; (S) - SHIP TO

☐☐ LETTERHEAD ADDRESS ☐☐ WHEATFIELD PLANT NIAGARA FALLS BLVD. NIAGARA FALLS, N.Y. ☐☐

AWARD CODE

Hamilton Standard Division

TERMS | RQMT REF NO. | P.R. NO. 02401

F.O.B. | WORK ORDER | COST CODE | COST ELEM

SHIP VIA ☐ ESTABLISHED ROUTING | GOV'T CONTRACT NO.

PRIORITY RATING

FOR | AT

ITEM NO	QUANTITY	U/M	BELL PART NO./DESCRIPTION	REQ'D DATE	UNIT PRICE	TOTAL PRICE
			(c) Three (3) complete sets of operating and maintenance manuals shall be furnished, including all drawings, and schematics covering modifications, interconnection of M. C. sets and complete maintenance instructions of all accessories and equipment manufactures by others. (d) At the discretion of Bell Aerosystems, this machine may be inspected, in operation, at the Hamilton Standard Facility, before shipment to Bell. Hamilton Standard to notify Bell when available for inspection. (e) Machine shall be arranged to operate on 460 volt, 3 phase, 60 HZ service. (f) The mechanical pumps shall be isolated from the machine by nylon couplings to impart a minimum of vibration to the work table. (g) There shall be no compression shift in table or work positioning equipment when the access doors are closed and vacuum is drawn.			

(CONTINUED)

VENDOR DELIVERY SCHEDULE

ITEM NO	QTY/DATE	ITEM NO	QTY./DATE

LOCATION | BUYER NO. 17 | VENDOR NO. 9141 | TOTAL

-39-

256

Union Exh. No. 1344 of 91

PURCHASE ORDER

DATE .../69 | P.O. NO. .297200-17

BELL AEROSYSTEMS COMPANY AT: (S) - SHIP TO

☐☐ LETTERHEAD ADDRESS ☐☐ WHEATFIELD PLANT NIAGARA FALLS BLVD. NIAGARA FALLS, N.Y. ☐☐

AWARD CODE

Hamilton Standard Division

TERMS	REQMT REF NO.	P.R. NO. 02405
F.O.B.	WORK ORDER	COST CODE / COST ELEM
SHIP VIA ☐ ESTABLISHED ROUTING ☐	GOV'T CONTRACT NO.	
FOR	PRIORITY RATING / AT	

ITEM NO	QUANTITY	U/M	BELL PART NO./DESCRIPTION	REQ'D DATE	UNIT PRICE	TOTAL PRICE
			(h) The cooling water piping system shall be so designed as to eliminate interaction of the drain lines from mechanical pump and diffusion pump. This will prevent restrictions in the lines and allow free flows from all sources. (i) Per Hamilton Standard specifications, Vacuum System shall consist of a 300 CFM mechanical forepump, 10 in. 4200 I/S fractioning oil diffusion pump and 35 CFM mechanical pump backing in diffusion pump. All necessary valves, operating in proper sequence and timing shall be automatic, in accord with Item #3 of this Purchase Order. (j) At the time of delivery of this machine, a factory field engineer will assist in its installation and check-out and instruct Bell personnel in its operation and maintenance. (k) All electrical apparatus of this facility must comply with J.I.C. specs. (l) Final acceptance shall be made after complete installation at	(CONT.)		

VENDOR DELIVERY SCHEDULE

ITEM NO	QTY./DATE	ITEM NO	QTY./DATE

LOCATION | BUYER NO. 17 | VENDOR NO. 49141 | TOTAL

-40-

257

Bell Form No. 13 (5 of

PURCHASE ORDER

P.O. DATE 7/29/69 | P.O. NO. 297200-17 | P.R. NO. 026091

(S) - BELL BELL AEROSYSTEMS COMPANY AT; (S) - SHIP TO

☐☐ LETTERHEAD ADDRESS ☐☐ WHEATFIELD PLANT NIAGARA FALLS BLVD. NIAGARA FALLS, N.Y. ☐☐

Hamilton Standard Division

TERMS | REQMT REF NO. | F.O.B. | WORK ORDER | COST CODE | COST ELEM.

AWARD CODE

SHIP VIA ☐ ESTABLISHED ROUTING

GOV'T CONTRACT NO.

PRIORITY RATING

FOR | AT

ITEM NO	QUANTITY	U/M	BELL PART NO./DESCRIPTION	REQ'D DATE	UNIT PRICE	TOTAL PRICE
			(1) (cont.) Bell Aerosystems Wheatfield Plant, and machine is in full operation, making the weld detailed on Page Q69-43-13 to the satisfaction of Bell Quality Dept. This assembly consists of a Columbium -1% Zirconium injector E. B. welded to a liner, SCB-291 (80% Columbium, 10% Tantalum, 10% Tungsten.) (m) Purchasing Department to route copy of Purchase Order to Primary Standards, Dept. 677, to assure certification instrumentation after installation of equipment. (n) Price does not include a selective training course lasting one (1) week, for maintenance people and operators. (o) One Auxiliary Cannon plug shall be installed within the chamber to power Bell tooling, at no additional charge, per wire of Mr. O. Olsen of 3/19/69 and quote. (p) The variable speed of the universal rotor fixture, from 112 to 100 RPM shall have a Plus/Minus 3% accuracy of regulation over entire	(CONT.)		

VENDOR DELIVERY SCHEDULE

ITEM NO.	QTY./DATE	ITEM NO.	QTY./DATE

LOCATION | BUYER NO. 17 | VENDOR NO. 49141 | TOTAL

Union Exh. No. 13 (6 of 9)

PURCHASE ORDER

P.O. DATE 7/29/69 | P.O. NO. 297200-17 | P.R. NO. 024091

(C) - BELL AEROSYSTEMS COMPANY AT; (S) - SHIP TO

☐ LETTERHEAD ADDRESS ☐ WHEATFIELD PLANT NIAGARA FALLS BLVD. NIAGARA FALLS, N.Y. ☐

AWARD CODE

Hamilton Standard Division

TERMS | EQMT REP NO. | F.O.B. | WORK ORDER | COST CODE | COST ELEM

SHIP VIA ☐ ESTABLISHED ROUTING

GOV'T CONTRACT NO.

PRIORITY RATING

FOR | AT

ITEM NO.	QUANTITY	U/M	BELL PART NO./DESCRIPTION	REQ'D DATE	UNIT PRICE	TOTAL PRICE
			(p) (CONT.) range. (q) Digital readout dials are required for all power inputs to electron beam gun and focusing lens (except beam current control) to insure accurate reproduction of welding parameters. (r) Machine finish shall match that supplied on S/N 301, S/N 269, and S/N 243. (s) All safety requirements of New York State and Bell Aerosystems must be observed. No radiation levels shall exist, if an individual is consistently present in the area, could result in his receiving a dose in excess of 2.0 MILLIREMS in any one hour, or if an individual is consistently present in the area, could result in his receiving a dose in excess of 100 MILLIREMS in any seven (7) consecutive days. (t) Interior chamber surfaces shall have a #63 microinch finish or better.	(CONT.)		

VENDOR DELIVERY SCHEDULE

ITEM NO.	QTY. DATE	REMARKS	QTY./DATE

LOCATION | BUYER NO. 17 | VENDOR NO. 49141 | TOTAL

-42-

259

Union Exh. No. 13 (7 of 9)

PURCHASE ORDER

DATE 11/29/69 | P.O. NO. 297UU-17

(J) - BELL HELICOPTER COMPANY AT; (S) - SHIP TO

☐☐ LETTERHEAD ADDRESS ☐☐ WHEATFIELD PLANT NIAGARA FALLS BLVD. NIAGARA FALLS, N.Y. ☐☐

AWARD CODE

Hamilton Standard Division

TERMS | SOME REF NO. | P.R. NO. 024091

F.O.B. | WORK ORDER | COST CODE | COST ELEM

SHIP VIA ☐ ESTABLISHED ROUTING | GOV'T CONTRACT NO.

PRIORITY RATING

FOR | AT

ITEM NO	QUANTITY	U/M	BELL PART NO./DESCRIPTION	REQ'D DATE	UNIT PRICE	TOTAL PRICE
			(u) All moving parts shall have readily accessible provisions for adequate lubrication. (v) All replaceable parts shall be manufactured to definite standards for tolerance, clearance, and finish, in order that any such part may be field-installed without further machining. Where possible, all parts shall be permanently and legibly marked with the manufacturer's part number. (w) The entire system shall be certified to meet all FCC regulations. (x) With reference to Item #8 of P. O., the Texas Instruments recorder will accept current input resistances of 200,000 ohms per volt, and a 40 millivolt signal as specified in Hamilton Standard Quote No. Q69-43-1. (y) Installation drawings to be received thirty (30) days after receipt of Purchase Order. (CONTINUED)			

VENDOR DELIVERY SCHEDULE

ITEM NO	QTY/DATE	ITEM NO	QTY/DATE

LOCATION | BUYER NO. 17 | VENDOR NO. 49141 | TOTAL

-43-

260

Union Exh. No. 13 (8 of 9)

Page 9 of 9

PURCHASE ORDER

DATE 7/29/69 | P.O. NO. 297200-17 | P.R. NO. 024091

(S) - BELL AEROSYSTEMS COMPANY AT; (S) - SHIP TO

☐☐ LETTERHEAD ADDRESS ☐☐ WHEATFIELD PLANT NIAGARA FALLS BLVD. NIAGARA FALLS, N.Y. ☐☐

AWARD CODE

Hamilton Standard Division

TERMS | SOME REP NO.

F.O.B.

S V I A ☐ ESTABLISHED ROUTING

FOR

WORK ORDER | COST CODE | COST ELEM

GOVT CONTRACT NO.

PRIORITY RATING

AT

ITEM NO	QUANTITY	U/M	BELL PART NO./DESCRIPTION	REQ'D DATE	UNIT PRICE	TOTAL PRICE
			(z) A certified inspection sheet, listing the test results, shall be furnished to Bell Aerosystems Company, prior to shipment of the machine. (AA) Warranty on all parts shall extend for a period of one (1) year from date of acceptance of machine at Bell Aerosystems Company. (AB) This order voids and supercedes Bell letter of Intent dated May 9, 1969.			

LOCATION | BUYER NO. 17 | VENDOR NO. 49141 | TOTAL

VENDOR DELIVERY SCHEDULE

ITEM NO	QTY/DATE	REMARKS	QTY/DATE

(Continued on Page 10 of 9)

261

P16

JOB DESCRIPTION

Bell Aerospace Company ----- BUFFALO

Form 6571 Sheet 1

JOB TITLE	JOB CODE
SCHEDULER, MANUFACTURING RELEASE AND MATERIAL	666 F9

DUTIES:

CONTROL

Under the direction of a group leader or an employee of equal or higher rank, performs all the duties involved in accomplishing the work of a Manufacturing Release and Material Control Scheduler. Duties involve work such as or similar to the following: Originating a manufacturing record for items released by Engineering to be manufactured either by Bell or sub-contractors and determining quantities to be built. Release travelers at the proper configuration by the Manual or EDP System. Request Planning Engineering to update Operation Sheets as required in order to release at the proper configuration. Make all adjustments to the traveler package other than changes normally made by planning personnel. Review and release MDR replacements as required. Request new and replace ment drawings for traveler consoles. Proce as proper paperwork to initiate all submittals into Termination and if needed again for another contract, issue necessary paperwork for withdrawal. Make out work order transfers when required. Daily posting of completed travelers and adjustments.

Assignment of the BAC serial numbers and customer designated serial numbers, where necessary. Originates and maintains the traveler held for Material Report. Finalize Bills of Material for purposes of inputting and updating by determining and injecting the part type, total quantity, raw material code, source and manufacturing index for electronic data input sheets or similar instrument used to control any manufacturing release control records for the Manufacturing Departments. In the area of EDP Inventory Control, the Scheduler controls the Material Control Input/ Errors/Validity Report and initiates necessary action to remedy errors or mismatches for portions of report within their responsibility. Issuing Purchase Requisitions for all raw material, factory supplies, all approved Bell drawing numbered parts, min max items, all standard parts and, in the area of vendor parts, the Scheduler will issue Purchase Requisitions for all production and spares.

(over)

DESIRABLE QUALIFICATIONS:

High school education with a working knowledge of aircraft parts and manufacture and the ability to read and interpret all types of drawings. Eighteen months to three years' experience in scheduling and production control work. Incumbents must have a broad knowledge of production control methods and procedures as related to aircraft assembly and fabrication.

Union Exh. No. 16 (1 of 2)

DATE	JOB REVISED
July 19, 1970	666 F1 March 29, 1954 666 A8 & 666 A10 666 F9 July 24, 1967

SCHEDULER, MANUFACTURING RELEASE AND MATERIAL CONTROL (Cont'd)

Originate material control records for items purchased where necessary. Authorizing withdrawal of material from Inventory and requesting substitutions of material when necessary. (3) Prepare and maintain the Material Control Department BAC & BHC specifications listing for the purpose of supplying correct and current information, when submitting Purchase Requisitions to the Procurement Department. (4) Prepare split MSO's when required for shipment of Bell furnished material to vendors. (5) Contact appropriate department in connection with proposed changes and material substitutions. Analyze all proposed changes by determining status of affected parts and materials and, by measurement against tooling and schedule requirements, commit a point in manufacture at which this change can be accommodated based upon a specific release date. Record all such effects and commitments on a "Parts Disposition Report" and submit to group supervisor or Manufacturing Change Incorporation Board within allowed flow time. (A "Vendor Effectivity Request" form is processed for changes in the procurement category). Revalidate E.O. vellums representing approved changes (commit the effectivity and sign-off). Request "Revisions-in-Process (R.I.P.'s) and/or Rework Planning required to meet these change commitments. Request operation sheets and release travelers to authorize such transactions as "Manufacturing Engineering Work Authorizations" (MEWA's), Special Work Requests (S.W.R.'s); Material Disposition Report (M.D.R.) repairs, Non-Conformance and Failure Reports. Follow-up Schedulers contact procurement and monitor Procurement promise dates to assure support of manufacturing required dates. (9) Initiate work-around action where conflict exists. (8) and be continuously aware of status and be prepared to report to the procedure established for particular program. (7) This monitoring will be performed on those Purchase Requisitions initiated by Material Control Schedulers. (10) Establish priorities for Receiving and Receiving Inspection Departments. (11) Review and tracking of MDR's and NOIS Reports to assure receipt of material to stock in line with schedule need dates.

PURCHASE REQUISITION/PURCHASE ORDER/RECEIVING REPORT

P.O. DATE

CONTRACT NO. 60320 F33601-68-A-0032

PRIORITY RATING CERTIFIED UNDER DMS. REG. 1. DOAL

F.O.B.

P.R. NO. 6 3 2 0 4

PRICE & DELIVERY PER YOUR

AN ENTRY BELOW CONFIRMS OUR ORDER PLACED

CHANGE INFORMATION

COPR. NO.
COPO. NO.
CANCEL
DELIVERY
OTHER

AWARD CODE

BILL — LETTERHEAD ADDRESS AND UNLESS OTHERWISE STATED.
SHIP TO — WHEATFIELD PLANT
NIAGARA FALLS BLVD.
NIAGARA FALLS, N. Y.

REQUIREMENT REFERENCE NO. D3H666

VENDOR NO. A5 INVENTORY TYPE

CLEARANCE ROUTING UNLESS OTHERWISE STATED

PLN NO.	QUANTITY	U/M	PART NO.	DESCRIPTION	WORK ORDER	COST CODE	COST ELEM.	REQUIRED DATE	SUBCONTRACTOR DELIVERY DATE	UNIT PRICE	TOTAL PRICE
	1200	EA	205-060119-1C	CASTING ①	1514	000	521	021970			
	50	EA	205-060119-1C	" ②	1514	000	521	021970			
	1200	EA	205-060211-2C	" ①	1514	000	521	021970			
	50	EA	205-060119-2C	" ②	1514	000	521	021970			
			Purchase Complete per Sell Letter								
			Dwg. Chg "D" And Operation Shit Chg. 10A								
			In Vendors Possession. SPEC.	REV APPLIES							
			BPA-FW-4450	T - 1							
			BPA-FW 4163	C - 2							
			OPTION QTY								
	1/4 205		205-060 X19-1C	Casting							
	1/4 205		205-060 519-2C	Casting							

Q.C. CLAUSES

SUBJECT TO — AV RECEIVING INSPECTION

LOCATION

COST CODE 120

AUTHORIZED SIGNATURE

TOTAL

ORIGINATOR DATE ZONE FOR

BUYER NAME

APPROVAL SIGNATURES/STAMPS AND DATES

DEPT.
AUTH.
QUALITY
AUTH.
REP.

PROJECT

ACCOUNTING

THIS IS A PURCHASE ORDER WHEN P.O. NO. IS ENTERED AND APPROVED SUYER SIGNS BELOW

BUYER NO.

SUGGESTED SOURCE, SPECIAL INSTRUCTIONS, ESTIMATED COST — FRUNTIER DRONZE Corp. NIAGARA NY PROV. 220947-6

EXPLAIN IN DETAIL WHERE ITEM(S) WILL BE USED

INFORMATION TO ASSIST IN DETERMINING QUALITY CONTROL CLAUSE(S)

264

UNION EXH. NO. 19

BV 700 A 2 1 CC NY — Page 1 of 2

PURCHASE ORDER

P.O. DATE 6-18-70 — P.O. NO. 492710-6

.1) AAJ01-68-K-0022/60320
2) Various

PRIORITY RATING CERTIFIED UNDER DMS. REG. 1: DO A1

TERMS: Net 30

F.O.B.: S.P.

P.R. NO. 062294

CHANGE INFORMATION

COPO No.

MODE & DELIVERY PER YOUR: Quote dated 6/12/70 - #4451

AN ENTRY BELOW CONFIRMS OUR ORDER PLACED: By phone order on 6/16/70 - W. Gephardt

BILL - LETTERHEAD ADDRESS AND UNLESS OTHERWISE STATED.
SHIP TO - WHEATFIELD PLANT
NIAGARA FALLS BLVD.
NIAGARA FALLS, N. Y.

REQUIREMENT REFERENCE NO. DSN666

AWARD CODE: 41

Frontier Bronze Corporation
4870 Packard Road
Niagara Falls, New York 14304

SHIP VIA: See Below

ESTABLISHED ROUTING UNLESS OTHERWISE STATED

VENDOR NO. 42259 A5

B.I.I.-67-059

ALL ITEMS ARE SUBJECT TO INSPECTION AT WHEATFIELD UNLESS OTHERWISE STATED

ITEM NO.	QUANTITY	U/M	PART NO.	DESCRIPTION	REQUIRED DATE	ACKNOWLEDGE DELIVERY DATE	UNIT PRICE	P/E	TOTAL PRICE
				THE NAME BELL AEROSYSTEMS COMPANY IS DELETED WHEREVER IT APPEARS IN THIS ORDER AND THE NAME BELL AEROSPACE COMPANY IS SUBSTITUTED IN ITS PLACE.					
010	1200	pcs	205-060819-1C	Casting (1)	081470	081470	1.40	E	1,680.00
			W.O. 7564-000-501						
011	50	pcs	205-060819-1C	Casting (2)	081470	081470	1.40	E	70.00
	TOTAL 1250 pcs.		W.O. 7554-000-501						
020	1200	pcs	205-060819-2C	Casting (1)	081470	081470	1.40	E	1,680.00
			W.O. 7564-000-501						
021	50	pcs	205-060819-2C	Casting (2)	081470	081470	1.40	E	70.00
	TOTAL 1250 pcs.		W.O. 7554-000-501						
				Make complete per Bell Eng. Dwg. Chg. "D" and operation sht. Chg. "10A" in your possession.					
				Bell specs BPS-FW-4050, Rev. T, Amend. 1 and BPS-FW-4163 Rev. E, Amend. 2 are applicable to this requirement.					
				QPS 100 applies and quality clauses 310, 420, 440 (ht treat), 450 (per BPS FW 4163), 600 (per BPS FW 4089), 660a, 710 set forth in the annexed attachment are applicable to this order and certifications must accompany each shipment hereunder.					
				The provisions of Exhibit "B" (Rev. to Std. P.O. Instructions, Terms & Conditions), attached are incorporated herein & become a part of this purchase order.					

See Above

IMPORTANT — AN ANNEXED ATTACHMENT IS FURNISHED AND IS INCORPORATED AND APPLICABLE TO THE PERFORMANCE OF THIS ORDER WHEN ANY QUALITY CONTROL CLAUSE(S) IS INVOLVED AND RECORDED.

TOTAL 3,500.00

ORIGINATOR: F.A. Zagara — DATE: 061170 — DEPT: C49 — FOR — LOCATION — CODE 120 — SHIP CODE A

-48-

Union Exh. No. 17 (2 of 2)

265

BELL AEROSYSTEMS
A Textron Company

Page 2 of 2

PURCHASE ORDER

P.O. DATE: 6-18-70

P.O. NO.: 492710-6

P.R. NO.: 062294

GOV'T CONTRACT NO. | PRIORITY RATING CERTIFIED UNDER DMS REG. 1. | TERMS | F.O.B.

PRICE & DELIVERY PER YOUR | AN ENTRY BELOW CONFIRMS OUR ORDER PLACED

CHANGE INFORMATION - COPO No.

BILL - LETTERHEAD ADDRESS AND UNLESS OTHERWISE STATED.
SHIP TO - WHEATFIELD PLANT
NIAGARA FALLS BLVD.
NIAGARA FALLS, N. Y.

REQUIREMENT REFERENCE NO.

AWARD CODE

Frontier Bronze Corporation

$ ESTABLISHED ROUTING UNLESS OTHERWISE STATED

HY
II
PA

VENDOR NO. 42259

INSPECTION TYPE

ALL ITEMS ARE SUBJECT TO BAC INSPECTION AT WHEATFIELD UNLESS OTHERWISE STATED

ITEM NO.	QUANTITY	U/M	PART NO.	DESCRIPTION	PROMISED DATE	SCHEDULED DELIVERY DATE	UNIT PRICE	P.R. NO.	TOTAL PRICE
				THE NAME BELL AEROSYSTEMS COMPANY IS DELETED WHEREVER IT APPEARS IN THIS ORDER AND THE NAME BELL AEROSPACE COMPANY IS SUBSTITUTED IN ITS PLACE.					
				You are required to follow the provisions of DMS Reg. 1 and of all other applicable regulations and orders of BDSA in obtaining controlled materials and other products and materials needed to fill this order. Certified for national defense use under DMS Reg. 1.					
				OPTION FOR INCREASED QUANTITY					
030	*600	pcs	205-060819-1C	Casting (Same as Items 010 & 011)					
040	*600	pcs	205-060819-2C	Casting (Same as Items 020 & 021)					
				a) Buyer may increase the quantity of forgings called for herein, by requiring the delivery of *600 pcs. (Items 030 & 040) above, as an option item.					
				b) The Buyer may exercise this option at any time by giving notice to the Seller via phone, wire, or letter.					
				c) However, if the option is exercised within 4 weeks ARO for the 1250 pcs. (Items 010-021), the unit price will remain the same for the total quantity of 1850 pcs. of items 010 & 020.					
				d) Delivery of the quantity added by the exercise of this option, shall continue immediately after and at the same rate as delivery of the quantities of items 010 & 020.					
				e) Pursuant to (b) above, quantity and price changes will be validated by amendments hereto.					

IMPORTANT — AN ANNEXED ATTACHMENT IS FURNISHED AND IS INCORPORATED AND APPLICABLE TO THE PERFORMANCE OF THIS ORDER WHEN ANY QUALITY CONTROL CLAUSE(S) IS INVOLVED AND RECORDED.

TOTAL

DESIGNATOR | DATE | TONE | FOR | LOCATION | CRS | SHIP CODE

-49-

Union Exh. No. 17 (3 of 6)

266

GARY LUNGER 8-21-70

492710-6 063294 ITEMS #1 AND #2

FRONTIER BRONZE

P/N 205-060819-1C CASTING OVERSHIPPED BY 73 PCS

— P/N 205-060819-2C CASTING OVERSHIPPED BY 86 PCS.

[illegible] Gary has been overshipped according to Procurement Account [illegible] Please work closely and advise if corrective [illegible] accept this as new requirements. Please return this copy to the [illegible].

Thank you,

[illegible] Procurement
Lone Tree, Iowa

PART NO. DATE

205-060819-1C 73 pcs } Well below 10% allowable
-2C 86 pcs } Cost 1.40 per

BELL AEROSYSTEMS COMPANY

CHANGE PURCHASE REQUISITION

GOVT. ISSUE P.O. NO. 4 137 10-6
C.O.P.R. NO. 1
ORIGINAL P.R. NO. 06 2714
C.O.P.R. DATE 8-24-70
ORIGINAL P.O. DATE 6-18-70
ORIGINAL P.R. DATE 6-11-70

CHARGE NO. 7564-600-521
GOVT. CONTRACT NO. 60320 DAAJ01-68A-0022

REF. NO.	QUANTITY	UNIT	BELL PART NO./DESCRIPTION	UNIT PRICE	TOTAL PRICE
PURCHASE REQUISITION NOW READS IN WHOLE OR IN PART:					
010	1200	PC	205-060814-1C CASTING		
020	1200	PC	" "		
PURCHASE REQUISITION IS CHANGED TO READ:					
010	1273	PC	SAME		
020	1286	PC	"		
			TO SHOW QUANTITY INCREASE		

REASON(S) FOR THE CHANGE:
PURCHASING REQUEST TO ACCEPT OVERSHIPMENT OF LOW COST ITEMS TO BE USED FOR FUTURE REQUIREMENTS

WRITTEN BY	AUTHORIZED BY	BUYER NO.
W. R. Richmond 8-24-70		

Union Exh. No. 17 (5 of 6)

BELL AEROSYSTEMS COMPANY

CHANGE OF PURCHASE ORDER

P.O. Orig. DATE 6/18/70

P.O. NO. 492710-6

GOVT CONTRACT NO. SEE BELOW | PRIORITY RATING CERTIFIED UNDER DMS REG. 1 SEE BELOW | TERMS | F.O.B. | P.R. NO. 062294

PRICE & DELIVERY PER YOUR | AN ENTRY BELOW CONFIRMS OUR ORDER PLACED | CHANGE INFORMATION 8/28/70 COPY NO. 1

AWARD CODE 4.1

Frontier Bronze Corp.
4870 Packard Road
Niagara Falls, New York
14304

BILL - LETTERHEAD ADDRESS AND UNLESS OTHERWISE STATED.
SHIP TO - WHEATFIELD PLANT
NIAGARA FALLS BLVD.
NIAGARA FALLS, N. Y.

SHIP VIA | ESTABLISHED ROUTING UNLESS OTHERWISE STATED

REQUIREMENT REFERENCE NO.

SEE BELOW

VENDOR NO. 42259 | A5

ALL ITEMS ARE SUBJECT TO BAC INSPECTION AT WHEATFIELD UNLESS OTHERWISE STATED

LINE NO.	QUANTITY	U/M	PART NO.	DESCRIPTION	REQUIRED DATE	PROMISED DELIVERY DATE	UNIT PRICE	PER	TOTAL PRICE
				THIS PURCHASE ORDER IS AMENDED AS FOLLOWS: THE NAME BELL AEROSYSTEMS COMPANY IS DELETED WHEREVER IT APPEARS IN THIS ORDER AND THE NAME BELL AEROSPACE COMPANY IS SUBSTITUTED IN ITS PLACE.					
				WORK ORDER NOS.					
010	1273	PCS.	205-060819-1C	Casting 7564-000-501			1.40	1	1,782.20
				Contr: DAAJ01-68-A-0022/60320 (DO-A1)					
011	50		205-060819-1C	Casting 7554-000-501			1.40	1	70.00
	1323	total pcs.		Contr: Various					
020	1286	PCS.	205-060819-2C	Casting 7564-000-501			1.40	1	1,800.40
				Contr: DAAJ01-68-A-0022/60320 (DO-A1)					
021	50		205-060819-2C	Casting 7554-000-501			1.40	1	70.00
	1336	total pcs.		Contr: Various					
				NO COPY TO VENDOR					
				REASON FOR THE CHANGE: To accept overshipment of items 010 & 020.					

CHANGE ORDER

IMPORTANT AN ANNEXED ATTACHMENT IS FURNISHED AND IS INCORPORATED AND APPLICABLE TO THE PERFORMANCE OF THIS ORDER WHEN ANY QUALITY CONTROL CLAUSE(S) IS INVOLVED AND RECORDED. TOTAL 3,722.60

ORIGINATOR W. Richmond 082470 | DEPT C49 | FOR | LOCATION | CODE 120 | PROC CODE A

-52-

Union Exh. No. 17 (6 of 6)

269

BELL AEROSYSTEMS COMPANY

DEPARTMENTAL JOB INSTRUCTION

NUMBER 121-001
SUPPLEMENT
PAGE 1 OF 3

DIVISION Manufacturing FACILITY 11 DATE ISSUED May 24, 1968
DEPT. Procurement REF. BAPP DATE REVISED
TITLE Master Index
TITLE Departmental Job Instructions

18

Series	Grouping
121-000	Procurement Objectives and Functions
121-050	Purchase Order Preparation and Control Purchase Requisition Log Purchase Requisition Assignment Purchase Requisition Reports Blanket Orders Vendor No. Assignment Purchase Order Distribution Receiving Reports
121-150	Acknowledgments Terms and Conditions Legal Requirements Legal Coordination
121-200	Contract Types Contractual Requirements
121-250	Request for Quotations Source Selection Alternate Sources Major Expenditure Requests
121-300	Advance Commitments Negotiation Finance Coordination Cost & Price Analysis Financial Ratings (D & B) Facility Survey Supplier Evaluation Approval and Commitment Authority Cost Reduction Reports Customer Approvals Bid Comparison Forms
121-350	Purchase Order Changes Partial Cancellations Terminations

Form 5041

BELL AEROSYSTEMS COMPANY

DEPARTMENTAL JOB INSTRUCTION

NUMBER 121-001
SUPPLEMENT
PAGE 2 OF 3

DIVISION Manufacturing
DEPT. Procurement
TITLE Master Index

FACILITY 11
REF. BAPP

DATE ISSUED May 24, 1968
DATE REVISED

TITLE Departmental Job Instructions

Series	Grouping
121-400	Governmental Approvals NASA Regulations Rent-Free Use of Facilities
121-450	Small Business Policy Labor Surplus Areas Equal Opportunity
121-600	Administrative Section Vacation Schedules Sick Time, Jury Duty Attendance Reports Ethics - Gratuities Conflict of Interest Collusion Personnel Assignments Office Equipment Maintenance Housekeeping TOTAL Program
121-700	Estimating Procedures Material Estimate Requests Updating of Estimates Coordination
121-750	Equipment & Tooling Accountability Policies Use of Government Equipment on Loan Control of Bell-furnished Equipment Request for Subcontractor Tooling
121-800	EDP Systems Procurement EDP Reports Pricing History Control of EDP Inputs

Form 3641

BELL AEROSYSTEMS COMPANY

DEPARTMENTAL JOB INSTRUCTION

NUMBER 121-001
SUPPLEMENT
PAGE 3 OF 3
DATE ISSUED May 24, 1968
DATE REVISED

DIVISION Manufacturing
DEPT. Procurement
TITLE Master Index
TITLE Departmental Job Instructions
FACILITY 11
REF. BAPP

Series	Grouping
121-850	Expediting Procedures Preparation of MSO's Traffic Coordination
121-900	Material Control Procedures Material Codes Work Order and Cost Code Assignment Delivery Required Dates Critical Materials Handling
121-950	Security Section Subcontractor Clearances Preparation of DD 254 Personnel Clearances Handling & Disposition of Classified Documents

Form 0648

Union Exh. No. 18 (3 of 3)

Petition for Election—Case No. 3RC-4987.

Petition for Election.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

INSTRUCTIONS.—Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located. If more space is required for any one item, attach additional sheets, numbering item accordingly.	DO NOT WRITE IN THIS SPACE Case No. 3-RC-4987 Date Filed July 30, 1970

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

Petition for Election—Case No. 3RC-4987.

1. Purpose of this Petition *(If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.)*

(Check one)

[X] RC—CERTIFICATION OF REPRESENTATIVE—A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.

[ ] RM REPRESENTATION (EMPLOYER PETITION)—One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.

[ ] RD—DECERTIFICATION—A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.

[ ] UD—WITHDRAWAL OF UNION SHOP AUTHORITY—Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.

[ ] UC—UNIT CLARIFICATION—A labor organization is currently recognized by employer, but petitioner seeks clarification of placement of certain employees: *(Check one)*

[ ] In unit not previously certified

[ ] In unit previously certified in Case No. .....

[ ] AC—AMENDMENT OF CERTIFICATION—Petitioner seeks amendment of certification issued in Case No. .....

Attach statement describing the specific amendment sought.

---

2. Name of Employer

Bell Aerospace Co., Division of Textron, Inc.

Employer Representative to Contact — Phone No.

Peter J. Wacks — 692-2100

---

3. Address(es) of Establishment(s) Involved *(Street and number, city, State, and ZIP Code)*

P. O. Box One, Buffalo, New York 14240

4a. Type of Establishment *(Factory, mine, wholesaler, etc.)*

Factory

4b. Identify Principal Product or Service

Aerospace products

Petition for Election—Case No. 3RC-4987.

5. Unit Involved (*In UC petition, describe PRESENT bargaining unit and attach description of proposed clarification.*)

Included

All Buyers in Purchasing and Procurement, Department 121

Excluded

All production and maintenance employees, all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

6a. Number of Employees in Unit

Present 25

Proposed (by UC/AC)

.....

6b. Is This Petition Supported by 30% or More of the Employees in the Unit?

[X] Yes [ ] No

* *Not applicable in RM, UC, and AC.*

(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)

7a. [X] Request for recognition as Bargaining Representative was made on *(Month, day, year)*
July 30, 1970 and Employer declined recognition on or about
No reply *(If no reply received, so state)*
(Month, day, year)

7b. [ ] Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

8. Recognized or Certified Bargaining Agent *(If there is none, so state)*

Name

None

Address

Affiliation

Date of Recognition or Certification

9. Date of Expiration of Current Contract, if Any *(Show month, day, and year)*

None

Petition for Election—Case No. 3RC-4987.

10. If You Have Checked Box UD in 1 Above, Show Here the Date of Execution of Agreement Granting Union Shop *(Month, day and year)*

11a. Is There Now a Strike or Picketing at the Employer's Establishment(s) Involved?

Yes..... No X

11b. If So, Approximately How Many Employees Are Participating?

11c. The Employer Has Been Picketed By or on Behalf of ..... *(Insert name)*

a Labor Organization, of ..... *(Insert address)* Since ..... *(Month, day, year)*

12. Organizations or Individuals other than Petitioner (and other than those named in Items 8 and 11c), which have claimed recognition as Representatives, and other Organizations and Individuals known to have a Representative interest in any Employees in the Unit described in Item 5 above. (If none, so state.)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM *(Required only if Petition is filed by Employer)*
none			

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AMALGAMATED LOCAL 1286
(Petitioner and affiliation, if any)

By /s/ JOHN R. MIRANDA
(Signature of representative or person filing petition)

President
(Title, if any)

Address 257 Elmwood Avenue, Buffalo, New York 14222
(Street and number, city, State, and ZIP Code)

883-6866
(Telephone Number)

Wilfully false statement on this petition can be punished by fine and imprisonment (U. S. Code, Title 18, Section 1001)

Tally of Ballots.

Case No. 3-RC-4987.

Date issued June 16, 1971

Type of Election:
[x] Board Direction

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1.	Approximate number of eligible voters ..	24	
2.	Void ballots	——	
3.	Votes cast for Local 1286, UAW		15
4.	Votes cast for		——
5.	Votes cast for		——
6.	Votes cast against participating labor organization(s)		9
7.	Valid votes counted (sum of 3, 4, 5, and 6)		24
8.	Challenged ballots		——
9.	Valid votes counted plus challenged ballots (sum of 7 and 8)		24
10.	Challenges are (*not*) sufficient in number to affect the results of the election.		
11.	A majority of the valid votes counted plus challenged ballots (Item 9) has been cast for: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Amalgamated Local 1286		

For the Regional Director.

/s/ JOAN ALEXANDER.

Request for Reconsideration.

Case No. 3-RC-4987

State of New York, }
County of Erie. } ss.:

PETER J. WACKS, being duly sworn, deposes and says that he is Vice President, Industrial Relations, of Bell Aerospace Division of Textron Inc., hereinafter referred to as "Petitioner."

Deponent further states that by decision dated May 20, 1971, the Board directed an election to be held among the employees in the unit described as follows:

> "All Buyers in Department 121, the Purchasing and Procurement Department, at the Employer's Wheatfield, New York plant, excluding all production and maintenance employees, all office clerical employees, professional employees, guards and supervisors as defined in the Act."

Deponent further states that the employees within the said unit are managerial employees, and that to permit them to organize for the purpose of collective bargaining with Petitioner would severely handicap Petitioner. Petitioner's business is in research, development and production of components of rockets, missiles and other objects used by the United States Government in the aerospace industry, acting as either prime contractor with the United States Government, or as subcontractor for another prime contractor having a contract with the United States Government. It is vitally important that in purchasing materials and articles for use by the Government, with absolute and unqualified delegation of responsibility for the commitment of the Petitioner for amounts up to $5,000.00,

in addition to the discharge of other responsibilities with unlimited authority, the buyers in question should be undivided in their loyalty to Management. Membership in a bargaining unit inevitably results in a conflict of interest with Management and a division in their loyalty to Management.

The union was not certified until August 12, 1971, and notification of certification was received by Petitioner only on August 16, 1971. Also on August 12th, the Circuit Court of Appeals for the 8th Circuit reversed the decision of the Board in *National Labor Relations Board v. North Arkansas Electric Cooperative, Inc.*, 185 NLRB No. 83, upon which the decision directing the election in this case was based. That case reaffirmed a long line of cases, prior to that decision, in which this Board had held that managerial employees were not subject to the Act.

Deponent therefore requests that this Board reconsider its decision, and render a decision consistent with all existing law upon the subject, dismissing the petition for election in the unit herein above described, and for such other and further relief as may be equitable under the circumstances.

No other request has been made for the relief herein requested.

PETER J. WACKS.

Sworn to before me this
17th day of August, 1971.
Horace C. Winch, Reg. No. 1151,
Notary Public, State of New York,
Residing in Erie County,
My Commission Expires March 30, 1973.

Charge Against Employer.

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.	DO NOT WRITE IN THIS SPACE Case No. 3-CA-4695 Date Filed December 2, 1971

1. Employer Against Whom Charge is Brought

a. Name of Employer
Bell Aerospace Company, Division of Textron, Inc.

b. Number of Workers Employed
4,000

c. Address of Establishment (Street and number, city, State, and ZIP code)
P. O. Box 1
Buffalo, New York 14240

d. Employer Representative to Contact
Peter J. Wacks, Vice President

e. Phone No.
716-NX2-2100 Ext. 61

f. Type of Establishment (Factory, mine, wholesaler, etc.)
Factory

g. Identify Principal Product or Service
Aerospace Products

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (5)
(List subsections)
of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

Charge Against Employer—Case No. 3-CA-4695.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about November 9, 1971, and at all times thereafter, the above-named Employer, by its officers, agents and representatives, has refused to bargain collectively with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Amalgamated Local 1286, a labor organization certified by the Board as the exclusive representatives of all the employees in an appropriate bargaining unit, for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

By the above and other acts and conduct, the employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Amalgamated Local 1286

4a. Address (Street and number, city, State, and ZIP code)

257 Elmwood Avenue, Buffalo, New York 14222

4b. Telephone No.

883-6866

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ JOHN MIRANDA
(Signature of representative or person filing charge)

President
(Title, if any)

Address 257 Elmwood Avenue
Buffalo, New York 14222

883-6866 December 2, 1971
(Telephone number) (Date)

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 1001)

Complaint and Notice of Hearing.

Case No. 3-CA-4695

It having been charged by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Amalgamated Local 1286, herein called the U. A. W., that Bell Aerospace, a Division of Textron, Inc., herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U. S. C. Sec. 151 *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Acting Regional Director for the Third Region, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations, Series 8, as amended,

Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

I

The charge was filed by the U. A. W. on December 2, 1971, and served on Respondent on or about December 3, 1971, by registered mail.

II

(a) Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Delaware.

(b) At all times material herein, Respondent has maintained its principal office and place of business at Wheatfield, New York, herein called the Wheatfield plant, and is, and has been at all times material herein, engaged at said plant and location in research and development in the design and fabrication of aerospace products.

(c) During the past year Respondent, in the course and conduct of its business operations, purchased, transferred, and delivered to its Wheatfield plant, goods and materials valued in excess of $50,000, of which goods and materials valued in excess of $50,000 were transported to said plant directly from States of the United States other than the State of New York.

III

Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

IV

The U. A. W. is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

V

At all times material herein, the following-named person occupied the position set opposite his name, and has been, and is now an agent of Respondent at its Wheatfield plant, acting on its behalf, and is a supervisor within the meaning of Section 2(11) of the Act.

Peter J. Wacks—Vice President

VI

All buyers in Department 121, the Purchasing and Procurement Department, at Respondent's Wheatfield plant, excluding all production and maintenance employees, all office clerical employees, professional employees, guards and supervisors as defined in the Act constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

VII

On June 16, 1971, a majority of employees in the unit described above in paragraph VI, by a secret ballot election conducted under the supervision of the Regional Director for the Third Region of the Board, designated and selected the U. A. W. as their representative for the purpose of collective bargaining with Respondent; and on August 12, 1971, the Board certified the U. A. W. as the exclusive collective bargaining representative of the employees in said unit.

VIII

At all times since June 16, 1971, the U. A. W. has been the representative for the purpose of collective bargaining in the unit described above in paragraph VI, and, by virtue of Section 9(a) of the Act, has been and is the exclusive representative of all the employees in said unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

IX

Commencing on or about November 9, 1971, and continuing to date, the U. A. W. has requested, and is requesting, Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive collective-bargaining representative of Respondent's employees in the unit described above in paragraph VI.

X

Commencing on or about November 9, 1971, and at all times thereafter, Respondent did refuse and continues to refuse to bargain collectively with the U. A. W. as the collective-bargaining representative of all the employees in the unit described above in paragraph VI by refusing, and continuing to refuse, to recognize and bargain with the U. A. W., notwithstanding that said Union was then, and continues to be, the duly designated exclusive collective-bargaining representative of the employees set forth in paragraph VI above.

XI

By the acts described above in paragraph X, and by each of said acts, Respondent did interfere with, restrain and coerce, and is interfering with, restaining and coercing, its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in, and is engaging in, unfair labor practies affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

XII

By the acts described above in paragraph X, and by each of said acts, Respondent did refuse to bargain collectively, and is refusing to bargain collectively, with the representatives of its employees, and thereby did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

XIII

The acts of Respondent described in paragraph X above, occurring in connection with the operations of Respondent described in paragraph II above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XIV

The acts of Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

Complaint and Notice of Hearing—Case No. 3-CA-4695.

PLEASE TAKE NOTICE that on the 8th day of February, 1972, at 10:00 A. M., Eastern Standard Time, in the Hearing Room of the National Labor Relations Board, 111 West Huron Street, Buffalo, New York, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Case, is attached.

You are further notified that, pursuant to Section 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from the service thereof and that unless it does so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

Dated at Buffalo, New York, this 21st day of December, 1971.

THOMAS H. RAMSEY,
Acting Regional Director,
National Labor Relations Board,
Third Region,
111 West Huron Street,
Buffalo, New York.

Answer.

Case No. 3-CA-4695.

The respondent, Bell Aerospace Company Division of Textron Inc., by its attorneys, Ohlin, Damon, Morey, Sawyer & Moot, for its answer to the matters set forth in the complaint:

First: Admits the allegations contained in paragraphs II, III and IV of the complaint.

Second: Answering paragraph I of the complaint, the respondent admits that the charge was served upon it on or about December 3, 1971 by registered mail, but denies any knowledge or information sufficient to form a belief as to the remaining allegations of said paragraph.

Third: Answering paragraph V of the complaint, the respondent denies that Peter J. Wacks is now an agent of the respondent, said Peter J. Wacks having retired on December 31, 1971, but admits the remaining allegations of said paragraph.

Fourth: Answering paragraph VII of the complaint, the respondent admits the allegations of said paragraph, but alleges that, following the certification of the UAW on August 12, 1971 by the NLRB, the respondent immediately filed and served a petition requesting the Board to reconsider its decision and certification, that said petition for reconsideration was accepted and filed by the Board and that a decision thereon is pending, and that the certification referred to in paragraph VII of the complaint is not final.

Fifth: Answering paragraph IX of the complaint, the respondent admits that on or about November 9, 1971, and

notwithstanding the aforementioned petition for reconsideration, the UAW claimed to be the exclusive bargaining representative of the employees in the unit described in paragraph VI of the complaint and requested and is continuing to request, the respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Sixth: Answering paragraph X of the complaint, the respondent admits that commencing on or about November 9, 1971, and at all times thereafter, it did not proceed to recognize and bargain collectively with the UAW as the exclusive bargaining representative of the employees described in paragraph VI of the complaint, since the certification of the UAW is not final in view of the respondent's petition for reconsideration which is presently pending decision before the NLRB. That the respondent's position is more fully set forth in Exhibit 3 attached hereto, that said position was fully explained to the UAW's agents, and that the respondent denies that the UAW, on November 9, 1971 or at any time subsequent thereto, was the duly designated collective bargaining agent of the aforesaid employees.

Seventh: Denies each and every other remaining allegation of the complaint not hereinbefore specifically admitted, denied, or otherwise answered.

FOR A FIRST AFFIRMATIVE DEFENSE

Eighth: That the certification of the UAW as exclusive bargaining representative for the employees described in paragraph VI of the complaint herein is not final as evidenced by the documents affixed hereto and marked Exhibits 1 through 4.

FOR A SECOND AFFIRMATIVE DEFENSE.

Ninth: That the employees described in paragraph VI of the complaint herein are not employees within the meaning of the Labor Management Relations Act, as amended, and that a unit of said employees is not an appropriate unit for purposes of collective bargaining within the mean- of Section 9 (b) of said Act.

WHEREFORE, the respondent Bell Aerospace Company Division of Textron Inc. demands that the complaint herein be dismissed.

OHLIN, DAMON, MOREY,
SAWYER & MOOT,

By .....
Attorneys for Respondent,
Bell Aerospace Company Division of Textron Inc.,
1800 Liberty Bank Building,
Buffalo, New York 14202.

Exhibit 1 Attached to Answer.

Exhibit 1—Telegram From Attorneys for Petitioner to NLRB Dated 8/13/71.

August 13, 1971

National Labor Relations Board
Mr. George Leet, Associate Executive Secretary
Penn Seventeen Building
1717 Pennsylvania Avenue, N. W.
Washington, D. C. 20570

BELL AEROSPACE COMPANY DIVISION OF TEXTRON INC. AND INTERNATIONAL UNION, UAW LOCAL 1286, 190 NLRB NO. 66

Board decision in this case Dated May 20, 1971 relied specifically upon Board's decision in North Arkansas Electric Cooperative, Inc. 185 NLRB No. 83, which has just been reversed by Circuit Court of Appeals, 8th Circuit. We expect to receive copy of decision August 16 and immediately upon receipt shall move Board to reconsider its decision in bell case, which is presently before Board on objections to conduct of election. Union has not yet been certified.

Copies sent to regional director and Ray Laracy.

HORCE C. WINCH

for OHLIN, DAMON, MOREY, SAWYER & MOOT
Attorneys for Bell Aerospace Company

Exhibit 2 Attached to Answer.

Exhibit 2—Letter From Attorneys for Petitioner to NLRB Dated 8/17/71.

August 17, 1971

National Labor Relations Board
Penn Seventeen Building
1717 Pennsylvania Avenue, N. W.
Washington, D. C. 20570

Re: Bell Aerospace Company Division of Textron Inc. and International Union, United Automobile, Aeorspace and agricultural Implement Workers of America, Amalgamated Local 1286

Case No. 3-RC-4987

Gentlemen:

We enclose the following:

1. Eight (8) copies of Request for Reconsideration.
2. Eight (8) copies of our Brief in support of such request.
3. Eight (8) copies of the decision of the United States Court of Appeals for the 8th Circuit in *National Labor Relations Board v. North Arkansas Electric Cooperative, Inc.*, reversing the decision of the Board reported at 185 NLRB No. 83.

Exhibit 2 Attached to Answer.

Copies of this letter and of the enclosures are being mailed simultaneously to the Union and its Staff Representative, Mr. Ray Laracy, and to the Regional Director at Buffalo.

Very truly yours,

HORACE C. WINCH

for OHLIN, DAMON, MOREY, SAWYER & MOOT

P
Enc.
AIR MAIL
CC: International Union, United Automobile, Aerospace and Agricultural Implement Workers of Amer., Amal. Local 1286 Messrs. Ray Laracy, Thomas N. Seeler, Peter J. Wacks

Exhibit 3 Attached to Answer.

Exhibit 3—Letter From Attorneys for Petitioner to Petitioner Dated 12/1/71.

December 1, 1971

Mr. Peter J. Wacks
Vice President, Industrial Relations
Bell Aerospace Company
Post Office Box One
Buffalo, New York 14240

Re: Bell Aerospace Company Division of Textron, Inc. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Amalgamated Local 1286 Case No. 3-CA-4695 & Same Matter Case No. 3-RC-4987

Dear Mr. Wacks:

At your request following an inquiry from the union representative on the request for contract negotiations in the above, we have contacted the local National Labor Relations Board office here in Buffalo to determine the status of our petition for reconsideration filed with the National Labor Relations Board in Washington on August 17, 1971. You will recall that contemporaneously with the decision on the certification of the Bell local unit in the above, the Court of Appeals for the 8th Circuit reversed the North Arkansas case upon which certification of the Bell local was based.

At the time we promptly notified the NLRB in Washington by telegram and immediately filed a petition for reconsideration on the grounds that the authority relied upon for certifying the Bell local had been reversed by the 8th Circuit Court of Appeals. Copies of our petition for reconsideration and accompanying brief were furnished to the

local NLRB office and the various interested parties. The purpose of this petition was to avoid a result with respect to our local unit which was contrary to the law as decided by the 8th Circuit.

Pending the decision on our petition for reconsideration, or appeal, in the above proceeding, it is our opinion that the rights of neither party have been finally determined in the matter. It is our recommendation and advice that neither proceed further in the matter until the decision on our petition has been handed down by the NLRB.

The local NLRB office, in response to the inquiry you requested, has advised us on December 1st that a check with the National Labor Relations Board has established that Bell's petition for re-hearing is properly filed and pending the consideration of the Board and its decision.

As soon as the decision is received we will advise you promptly. In the meantime it is our recomendation that you do not proceed with contract negotiations. If the petition is granted such negotiations will have no legal effect. Likewise, the filing of an unfair labor practice for refusal to negotiate would be meaningless if Bell's petition is sustained. Under the circumstances meaningful contract negotiations will simply have to await the decision of the National Labor Relations Board.

Very truly yours,

RICHARD E. MOOT
for OHLIN, DAMON, MOREY,
SAWYER & MOOT

REM:jip
cc: National Labor Relations Board
Buffalo, New York

Exhibit 4 Attached to Answer.

Exhibit 4—Letter From Attorneys for Petitioner to NLRB Dated 12/13/71.

December 13,1971

National Labor Relations Board
111 West Huron Street
Buffalo, New York 14202

Attention: Mr. Richard C. Heffern

Re: Bell Aerospace Company Division of Textron, Inc. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Amalgamated Local 1286 Case No. 3-CA-4695 and Same Matter, Case No. 3-RC-4987

Dear Sir:

We represent the employer, Bell Aerospace Company Division of Textron, Inc. in the above matter. Following certification of Local 1286 UAW, the Company immediately filed a petition to review said certification on the grounds that the decision in the North Arkansas Electric Cooperative, Inc. case, upon which said certification was issued, had been reversed.

On December 9, 1971, your office advised the undersigned that a complaint would be issued in this matter unless the Company agreed in writing to abide by the National Labor Relations Board's decision on the Company's pending petition which requests the Board to reconsider its earlier holding that Local 1286, a unit of buyers employed by the Company, was appropriate for bargaining under the Labor Management Relations Act. In effect, this pro-

posal requires the Company to waive its rights to have representation questions reviewed by the United States Court of Appeals following a refusal to bargain with the certified representative.

It is the position of the Company that:

1. The reversal of the NLRB's decision in the North Arkansas Electric Cooperative, Inc. case by the United States Court of Appeals for the Eighth Circuit warrents the granting of the relief sought by the Company in its pending petition before the Board, and
2. In the event the NLRB fails to adopt the rule of the Eighth Circuit in the North Arkansas case, the Company is entitled to appeal to the Second Circuit to review such an adverse ruling and cannot be asked to sacrifice this right or whatever legal rights it may have for further review of the critical issues raised in these proceedings.

Furthermore, until the Company has had an opportunity to review the form, content and rationale of a possibly adverse decision by the Board, it is entirely unable to make an intelligent determination of what further review it would seek, if any.

It is also the Company's position that the issuance of a charge at this time is totally inappropriate. By accepting the Company's petition for further consideration of the issues involved in this matter, it is clear that the Board has not yet made a final determination regarding questions of representation. Should a charge be filed and the Company found to be in violation of Section 8a(5) of the Act, the parties may be in the questionable position of appearing

before the Court of Appeals: (1) before the NLRB has completed its disposition of the Company's petition; or (2) after the NLRB has granted the petition by acquiescing in the North Arkansas case and has found the certification to have been improperly issued.

Considering all the circumstances, we feel that no further action should be undertaken until the Board renders a decision on the Company's pending petition for reconsideration and the Company has had a fair opportunity to consider such decision and elect at that time whether to abide by the same or exercise its right to appeal.

Respectfully yours,

RICHARD E. MOOT
OHLIN, DAMON, MOREY,
SAWYER & MOOT
Attorneys for Respondent/Employer

REM:gs
cc: Mr. Peter Wacks

SUPREME COURT OF THE UNITED STATES

No. 72-1598

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

BELL AEROSPACE COMPANY DIVISION OF TEXTRON, INC.

ORDER ALLOWING CERTIORARI—Filed October 9, 1973

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1973 526727 128

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SUPREME COURT, U. S.

FILED
MAY 29 1973
MICHAEL RODAK, JR., CLERK

No. 72-1598

In the Supreme Court of the United States

OCTOBER TERM, 1972

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

BELL AEROSPACE COMPANY DIVISION OF TEXTRON INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530

PETER G. NASH,
General Counsel,
JOHN S. IRVING,
Deputy General Counsel,
PATRICK HARDIN,
Associate General Counsel,
NORTON J. COMEN,
Assistant General Counsel,
LINDA SHER,
Attorney,
National Labor Relations Board,
Washington, D.C. 20570

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statutes involved	2
Statement	2
A. The Board proceedings	2
B. The decision of the court of appeals	6
Reasons for granting the writ	8
Conclusion	20
Appendix A	21
Appendix B	46
Appendix C	47
Appendix D	60
Appendix E	69
Appendix F	76

CITATIONS

Cases:

Amalgamated Meat Cutters, Local 88 v. *National Labor Relations Board*, 237 F. 2d 20, certiorari denied, 352 U.S. 1015	16
Atlantic Greyhound Corp., 7 NLRB 1189	9
Barrett Division, Allied Chemical & Dye Corp., 65 NLRB 903	10
Dravo Corp., 54 NLRB 1174	9
Eastern Camera and Photo Corp., 140 NLRB 569	9
Electric Controller & Mfg. Co., 69 NLRB 1242	10
Ford Motor Co., 66 NLRB 1317	8
Friez & Sons, 47 NLRB 43	10
General Telephone Co. of Ohio, 112 NLRB 1225	9
Hudson Motor Car Co., 55 NLRB 509	9
Illinois State Journal-Register v. *National Labor Relations Board*, 412 F. 2d 37	7, 9
Int'l Ladies Garment Workers' Union v. *National Labor Relations Board*, 339 F. 2d 116	9

503-935—73——1

Cases—Continued	Page
Maryland Drydock Corp., 49 NLRB 733	10
National Labor Relations Board v. *North Arkansas Electric Cooperative, Inc.*, 446 F. 2d 602	5, 15
National Labor Relations Board v. *Wyman-Gordon*, 394 U.S. 759	17, 18
North Arkansas Electric Cooperative, Inc., 185 NLRB No. 83, 75 LRRM 1068	4
Packard Motor Car Co., 61 NLRB 4	10
Packard Motor Car Co. v. *National Labor Relations Board*, 330 U.S. 485	10, 14, 15, 16
Retail Clerks Int'l Ass'n v. *National Labor Relations Board*, 366 F. 2d 642, certiorari denied, 386 U.S. 1017	9
Securities & Exchange Comm'n v. *Chenery*, 332 U.S. 194	16
Soss Mfg. Co., 56 NLRB 348	9
Spicer Mfg. Corp., 55 NLRB 1491	8, 10
Swift & Co., 115 NLRB 752	9, 15, 16, 18
Vulcan Corp., 58 NLRB 733	9
Statutes:	
National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*):	
Sec. 2(2)	76
Sec. 2(3)	8, 76
Sec. 2(11)	77
Sec. 8(a)(1)	6, 77
Sec. 8(a)(5)	6, 77
Miscellaneous:	
93 Cong. Rec. 4677–4678, 2 Leg. Hist. 1303–1304	13
H. Conf. Rep. No. 510, 80th Cong., 1st Sess. 35, 1 Leg. Hist. 539	13
H. Rept. No. 245, 80th Cong., 1st Sess., 1 Leg. Hist. 305, 314	11, 12
H.R. 3020, 80th Cong., 1st Sess., 1 Leg. Hist. 167–168	11, 12
S. 1126, 80th Cong., 1st Sess., 1 Leg. Hist. 104	12, 13
S. Rep. No. 105, 80th Cong., 1st Sess. 3–5, 1 Leg. Hist. 409–411	12, 13

In the Supreme Court of the United States

OCTOBER TERM, 1972

No.

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

BELL AEROSPACE COMPANY DIVISION OF TEXTRON INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A, *infra,* pp. 21–45) is not yet reported. The Board's decision and order (Pet. App. C, *infra,* pp. 47–59) are reported at 197 NLRB No. 30. The Board's decision in the underlying representation case (Pet. App. D, *infra,* pp. 60–68) is reported at 190 NLRB No. 66; its order denying reconsideration in that proceeding (Pet. App. E, *infra,* pp. 69–75) is reported at 196 NLRB No. 127.

JURISDICTION

The judgment of the court of appeals (Pet. App. B, *infra*, p. 46) was entered on February 28, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Board properly determined that "managerial employees" are covered by the National Labor Relations Act unless their duties are such that it is likely that there would be a conflict of interest between their job responsibilities and their responsibilities to a labor organization.

2. Whether the court of appeals improperly required the Board to conduct rule-making rather than adjudicatory proceedings to determine whether certain employees are "managerial employees."

STATUTES INVOLVED

The relevant statutory provisions are set forth in Appendix F, *infra*, pp. 76–77.

STATEMENT

A. The Board Proceedings

On July 30, 1970, the Union [1] filed a representation petition with the Board, seeking certification as the bargaining representative of the 25 buyers in the Purchasing & Procurement Department of the Company's Wheatfield, New York plant, which manufactures and sells rocket engines and electronic equip-

[1] International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Amalgamated Local 1286.

ment (Pet. App. E, p. 69; A. 9).[2] The Company opposed the petition on the grounds that (1) the buyers were managerial employees and thus excluded from coverage of the Act; and (2) even if the buyers were not managerial employees, there would exist a potential conflict of interest between their obligations to the Union and those to the Company (Pet. App. E, p. 69).

A representation hearing was held at which the following facts were established:

The Purchasing & Procurement Department fills orders from 30 other departments (A. 23). This involves purchasing maintenance and repair items such as fuel oil and light bulbs, support items such as packaging supplies and paper for reproduction, and production items ranging from simple nuts and bolts to very sophisticated components for the equipment the Company manufactures (A. 37, 41). Many purchases are "off the shelf" items, which can be obtained from a number of sources. Other items must be made up according to the Company's specific needs (A. 23, 38).

There are no educational or formal training requirements for the Company's buyers, who are guided in their work by a detailed procurement manual (A. 59, 73, 90–91). In placing orders, the buyers are free to select a vendor, unless the requisitioning department has specified one. If the Department has specified a vendor, the buyer must secure approval before making a change (A. 170–171, 163–166). Buyers may place or cancel orders of less than $5,000 without prior ap-

[2] "A." refers to the printed appendix in the court below. A copy has been lodged with the Clerk.

proval. Larger orders must be approved by a supervisor (A. 30–33). When obtaining sophisticated production items—such as material for the Minute Man missile project, which represents 70 percent of the Company's sales—purchasing decisions are made by a team of supervisory personnel from the engineering, quality assurance, finance, and manufacturing departments. The buyer acts as spokesman for the group in dealing with prospective vendors, but, for high cost projects, the Chief of Finance participates in price negotiations. (A. 79–81, 87–88.) For such items, detailed specifications, including engineering blueprints, are included in the requisitions (A. 130–133).

The Board, following its decision in *North Arkansas Electric Cooperative, Inc.*, 185 NLRB No. 83, 75 LRRM 1068, where it had "found that, with the limitations there noted, 'managerial' employees are employees within the meaning of the Act and entitled to its protection," concluded that, "even though, as the Employer argues, the buyers may be 'managerial' employees, * * * as employees they are entitled to be represented under the Act, unless there is some cogent reason for denying such representation" (Pet. App. D, p. 61; A. 245). The Board further concluded that the record did not substantiate the Company's claim that the buyers' authority to commit the Company's credit, to select vendors, and to influence "make or buy decisions" created "a potential conflict of interest between the buyers as union members and the Em-

ployer" (Pet. App. D, pp. 62–63; A. 245–246).[3] Accordingly, the Board held that the Company's buyers were entitled to representation rights under the Act, and, finding that a unit of buyers was appropriate for collective bargaining purposes, directed an election in that unit (Pet. App. D, pp. 64–66; A. 247–249). The Union won the election by a vote of 15 to 9, and was certified by the Board as the buyers' bargaining representative (Pet. App. D, pp. 66–68; A. 251–253).

The Company moved the Board for reconsideration, noting that the Eighth Circuit[4] had recently denied enforcement of the Board's order in *North Arkansas Electric* (A. 254–255). The Board denied reconsideration (Pet. App. E, pp. 69–75; A. 256–262), stating that it disagreed with the Eighth Circuit that Congress, in 1947, had manifested an intent to exclude all managerial personnel from the coverage of the Act. The Board held that Congress was merely concerned with preserving the Board's practice of excluding "personnel associated with the formulation and implementation of labor relations policies." (Pet. App. E, pp. 72–73; A. 258–259.) The Board concluded that, in determining whether employees who have discretion in the formulation, determination, and effectua-

[3] The Board noted that "this is a factual issue, to be determined on the record of each case, in which any particular segment of managerial employees may seek to be represented by a labor organization" (Pet. App. D, p. 64, n. 3; A. 247, n. 3).

[4] *National Labor Relations Board* v. *North Arkansas Electric Cooperative, Inc.*, 446 F. 2d 602 (discussed *infra*, p. 15).

tion of employer policies are excluded from the Act, "the fundamental touchstone" is whether their duties and responsibilities "do or do not include determinations which should be made free of any conflict of interest which could arise if the person involved was a participating member of a labor organization" (Pet. App. E, p. 74; A. 261). Applying that principle, the Board affirmed its earlier findings that union representation of the Company's buyers would not tend to create a conflict of interest, and that there was a sufficient community of interest among these buyers so that they constituted a separate appropriate unit for collective bargaining (Pet. App. E, p. 75; A. 262).

The Company refused to bargain with the Union, an unfair labor practice complaint issued, and the Board found that the Company had violated Section 8(a)(5) and (1) of the Act. The Board ordered the Company to bargain with the Union. (Pet. App. C, pp. 47–59.)

B. The Decision of the Court of Appeals

The court of appeals concluded that all true managerial employees are excluded from the coverage of the Act. The court reasoned as follows (Pet. App. A, pp. 38–39):

> The 1947 Congress clearly believed that at least some "managerial employees" other than "supervisors" were excluded from the protections of the Act. [Footnote omitted.] In 1956 the Board concluded that the Congress had meant to exclude all true "managerial employees". This exclusion embraced not only an

> employee "so closely related to or aligned with management as to place the employee in a position of conflict of interest between his employer on the one hand and his fellow workers on the other" but also one who is "formulating, determining and effectuating his employer's policies or has discretion, independent of an employer's established policy, in the performance of his duties," *Illinois State Journal-Register, Inc.* v. *NLRB*, 412 F. 2d 37, 41 (7 Cir. 1969). Both because of what we believe to have been the understanding of the 1947 Congress and because the Board's interpretation of it had been so clearly defined for the 1959 Congress, the Board is not now free to decide the contrary * * *.

The court added, however, that "the Board would [not] be precluded, on proper proceedings, from determining that buyers, or some types of buyers, are not true 'managerial employees' and consequently come within the protection of § 8(a)(5) and (1)" (Pet. App. A, p. 39). It ruled that there was "substantial evidence that Bell's buyers were not sufficiently high in the hierarchy to constitute 'managerial employees' as that term has been defined" in *Illinois State Journal, supra* (Pet. App. A, p. 39). Nevertheless, the court denied enforcement of the Board's order for two reasons.

First, "we cannot be sure that the Board's decision rested on such a factual determination rather than on its new, and in our view, erroneous holding that it was free to regard *all* managerial employees as covered by the Act unless their duties met" the conflict of interest touchstone (Pet. App. A, p. 40). *Second,*

"while the Board was not precluded from reversing itself on the position that buyers, or some buyers, were not 'managerial employees,' we hold that, particularly in light of the justified contrary belief the Board had engendered, it could not do this in the manner that was done here"; rather, it should have conducted a rule-making proceeding in conformity with Section 4 of the Administrative Procedure Act (Pet. App. A, pp. 40–41). The Court remanded the case to the Board to conduct a rule-making proceeding (Pet. App. A, pp. 43–45).

REASONS FOR GRANTING THE WRIT

1. The holding of the court of appeals that all "managerial employees" are excluded from the coverage of the Act is erroneous and results in denying the benefits of the Act to a large number of employees who are entitled thereto. Review by this Court of that holding is therefore warranted.

a. Section 2(3) of the Wagner Act provided that "The term 'employee' shall include any employee * * * but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse * * *." The Board early ruled that "[t]he statutory definition is of wide comprehension," and that it covered "managerial"[5] and

[5] Managerial employees are "employees who are in a position to formulate, determine, and effectuate management policies. These employees * * * express and make operative the decisions of management." *Ford Motor Co.*, 66 NLRB 1317, 1322. For examples of the types of employees whom the Board has considered to be managerial, see *Spicer Mfg. Corp.*, 55 NLRB

"supervisory" employees. *Atlantic Greyhound Corp.*, 7 NLRB 1189, 1196; accord: *Dravo Corp.*, 54 NLRB 1174, 1177; *Soss Mfg. Co.*, 56 NLRB 348, 353–354. The Board also held, however, that managerial employees could not be included in bargaining units of rank-and-file employees. Thus, in *Vulcan Corp.*, 58 NLRB 733, 736, a buyer who spent 75 per cent of his time away from the plant was excluded from a production and maintenance unit "[b]ecause of the responsibility of his position and his peculiar relationship to management and * * * the fact that his interests are apparently different from those of the production and maintenance employees." Similarly, in *Hudson Motor Car Co.*, 55 NLRB 509, 512, the Board excluded buyers who "purchase all materials required by the Company," because "their duties are closely allied to management, differing materially from those of the

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1491, 1498 (expediters who placed and reassigned orders to expedite tool delivery); *Vulcan Corp.*, 58 NLRB 733, 736, and *Swift & Co.*, 115 NIRB 752, 753 (buyers who spent a substantial part of their time making purchases for the employer's account); *General Telephone Co. of Ohio*, 112 NLRB 1225, 1229 (local commercial representatives who dealt with the public, including handling their complaints). For examples of employees held not to be managerial, see *Eastern Camera and Photo Corp.*, 140 NLRB 569, 571 (manager of one-employee store with limited discretion to set prices); *Illinois State Journal-Register* v. *National Labor Relations Board*, 412 F. 2d 37, 41–43 (C.A. 7) (managers of newspaper delivery service with limited authority with respect to management policy); *Retail Clerks Int'l Ass'n* v. *National Labor Relations Board*, 366 F. 2d 642, 644–645 (C.A. D.C.), certiorari denied, 386 U.S. 1017, and *Int'l Ladies Garment Workers' Union* v. *National Labor Relations Board*, 339 F. 2d 116, 123 (C.A. 2) (union representatives whose exercise of discretion was limited by established policy).

other clerical employees." See, also, *Friez & Sons*, 47 NLRB 43, 47; *Electric Controller & Mfg. Co.*, 69 NLRB 1242, 1245–1246; *Barrett Division, Allied Chemical & Dye Corp.*, 65 NLRB 903, 905.

The Board also excluded supervisory employees from units of rank-and-file employees (see *Spicer Mfg. Corp.*, 55 NLRB 1491), and held that even a separate unit of supervisory personnel would not be appropriate. *Maryland Drydock Corp.*, 49 NLRB 733. In *Packard Motor Car Co.*, 61 NLRB 4, however, the Board found appropriate a separate unit of foremen, on the ground, *inter alia*, that under "our consistent and now well settled position * * * supervisors are 'employees' within the meaning of Section 2(3) of the Act" (*id.* at 6). This Court sustained the Board's decision, finding "nothing in the Act which indicates that Congress intended to deny its benefits to foremen as employees, if they choose to believe that their interests as employees would be better served by organization [rather] than by individual competition." *Packard Motor Car Co.* v. *National Labor Relations Board*, 330 U.S. 485, 490.

b. In the 1947 Taft-Hartley Amendments of the Act, Congress overturned the *Packard* ruling that supervisory employees were subject to the Act. The legislative history of those Amendments shows, however, that, with one exception not here applicable, Congress did not intend to change the Board's interpretation that the Act covered management employees.

The House Bill excluded supervisors from the definition of employees, and defined a supervisor as including not only those individuals with power to

hire, transfer, promote, discharge, reward, or discipline other employees, or effectively to recommend such action, but also: (1) personnel who fix or make effective recommendations with respect to the amount of wages earned by other employees, and those who make effective recommendations with respect to the application of factors upon which wages are determined; (2) labor relations, time-study, police and guard personnel; and (3) confidential employees. The Bill defined the latter as any individual "who by the nature of his duties is given by the employer information that is of a confidential nature, and that is not available to the public, to competitors, or to employees generally, for use in the interest of the employer." Sec. 2(12) of H.R. 3020, 80th Cong., 1st Sess., 10–11, as passed by the House, 1 Legislative History of the Labor Management Relations Act, 1947 (hereafter "Leg. Hist.") 167–168.

The House Report explained that "when the foremen unionize, even in a union that claims to be 'independent' of the union of rank and file, they are subject to influence and control by the rank and file union, and, instead of their bossing the rank and file, the rank and file bosses them." H. Rep. No. 245, 80th Cong., 1st Sess., 14; 1 Leg. Hist., *supra*, at 305. Respecting the exclusion of confidential employees, the House Report added: "The Board, itself, normally excludes from bargaining units confidential clerks and secretaries to such people as these. But protecting confidential financial information from competitors and speculators, protecting secret processes and experiments from competitors, and protecting other vital secrets

ought not to rest in the administrative discretion of the Board or on the responsibility of whatever union happens to represent the employees." H. Rep. No. 245, *supra*, at 23; 1 Leg. Hist., *supra*, at 314.

The Senate Bill also excluded supervisors from the coverage of the Act, but defined that term more narrowly than did the House Bill:

> (11) The term "supervisor" means any individual having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, [or responsibly to direct them], or to adjust their grievances, or effectively to recommend such action if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. [Sec. 2(11) of S. 1126, 80th Cong., 1st Sess., 6; 1 Leg. Hist., *supra*, at 104.]

The Senate Report explained that unionization of supervisors "into organizations composed of or subservient to the unions of the very men they were hired to supervise" had led to a diminution in disciplinary action by supervisors and an increase in industrial accidents, and threatened to deprive management "of the undivided loyalty of its foremen." The Report added: "In drawing an amendment to meet this situation, the committee has not been unmindful of the fact that certain employees with minor supervisory duties have problems which may justify their inclusion in [the] act. It has therefore distinguished between straw bosses, leadmen, set-up-men, and other minor supervisory employees * * * and the super-

visor vested with such genuine management prerogatives as the right to hire or fire, discipline, or make effective recommendations with respect to such action." S. Rept. No. 105, 80th Cong., 1st Sess., 3–5; 1 Leg. Hist., *supra*, at 409–411.

The Conference Committee accepted the Senate's definition of supervisor.[6] With reference to those additional employees who had been included within the House, but not within the Senate, definition, the Conference Report stated:

> In the case of persons working in the labor relations, personnel and employment departments, it was not thought necessary to make specific provision, as was done in the House bill, since the Board has treated, and presumably will continue to treat, such persons as outside the scope of the act. This is the prevailing Board practice with respect to such people as confidential secretaries as well, and it was not the intention of the conferees to alter this practice in any respect. * * * [H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 35; 1 Leg. Hist., *supra*, at 539.]

In sum, prior to the 1947 amendments, the Board had held that the Act covered both managerial employees and supervisory employees, but that those employees should not be included in rank-and-file bargaining units. In the 1947 amendments, Congress specifically excluded supervisory employees from the coverage of the Act, but manifested no intention to

[6] The definition contained in S. 1126 had been slightly modified by the Senate. It accepted an amendment proposed by Senator Flanders which added the phrase "or responsibly to direct them." 93 Cong. Rec. 4677–4678; 2 Leg. Hist., *supra*, at 1303–1304.

alter the Board's preexisting practice with respect to managerial employees except in one respect. It noted that the specific exclusion for "persons working in the labor relations, personnel and employment departments" contained in the House Bill was unnecessary "since the Board has treated, and presumably will continue to treat, such persons as outside the scope of the act" (*supra,* p. 13). As the Board noted here (Pet. App. E, p. 72; A. 259): "The rationale underlying the Board's history of excluding such employees rests of course upon the premise that conflicts of interest are likely to arise between the collective employee group represented by a labor organization and personnel working as, with, or for management representatives whose area of responsibility includes bargaining with such a labor organization."

2. In the light of this legislative history, the Board correctly held that Congress did not intend to exclude all managerial employees from the coverage of the Act, but rather left it to the Board to determine "those managerial types who ought properly to be excluded," on the basis of "an examination as to whether the duties and responsibilities of any managerial employee or group of managerial employees do or do not include determinations which should be made free of any conflict of interest which could arise if the person involved was a participating member of a labor organization" (Pet. App. E, p. 74; A. 261). The contrary conclusion of the court below and of the Eighth Circuit in *National Labor Relations Board*

v. *North Arkansas Electric Cooperative, Inc.*, 446 F. 2d 602, rests upon the erroneous premise that, because Congress manifested an intent "to exclude a specific type of managerial personnel," *i.e.*, those concerned with the formulation and implementation of labor relations policies, "it thereby meant *all* managerial personnel, conceivably even those whose only 'managerial' functions involve a determination of what sources of supply should be used in making purchases of less than $5,000" (Pet. App. E, p. 72; A. 259). Nothing in the legislative history of the 1947 amendments to the Act or in the dissenting opinion in *Packard, supra*,[7] warrants that assumption.

The Board's decision in *Swift & Co.*, 115 NLRB 752, 753–754, does not justify the court of appeals' decision in this case. There the Board, in holding that a separate unit of poultry procurement drivers could not be considered appropriate for collective bargaining because the drivers were "representatives of management," stated that "[i]t was the clear intent of Congress to exclude from the coverage of the Act all individuals allied with management"—"[s]uch individuals cannot be deemed to be employees for purposes of the Act." This single sweeping and inaccurate statement does not vitiate the other indications detailed above that Congress did not intend such

[7] The dissenters in *Packard* were of the view that the Act should be construed as putting "in the employer category all those who acted for management not only in formulating but also in executing its labor policies." 330 U.S. at 496; see also *id.* at 500. The Board's test would exclude from the coverage of the Act managerial employees who were so involved with labor policies (see Pet. App. E, pp. 73–74; A. 260–261).

a blanket exclusion for managerial employees.[8] The Board was not precluded from subsequently correcting the statement. See *North Arkansas Electric Cooperative, Inc.*, 185 NLRB No. 83, p. 5, n. 8, 75 LRRM 1068, 1069, n. 8. Cf. *Packard, supra*, 330 U.S. at 492.

3. The further holding of the court below that the Board, on remand, must determine whether the Act covers the buyers through a rule-making, rather than an adjudicatory, proceeding, is contrary to settled principles governing the discretion of an administrative agency to select the appropriate procedure for deciding particular issues.

a. In *Securities & Exchange Comm'n* v. *Chenery Corp.*, 332 U.S. 194, this Court held that, while "[t]he function of filling in the interstices of the [Securities] Act should be performed, as much as possible, through [the] quasi-legislative promulgation of rules to be applied in the future * * * any rigid requirement to that effect would make the administrative process inflexible and incapable of dealing with many of the specialized problems which arise" (*id.* at 202). The Court added that "the choice made between proceeding by general rule or by individual, *ad hoc* litigation is one

[8] Indeed, despite the broad language in the Board's decision in *Swift*, the District of Columbia Circuit, in a secondary boycott proceeding, interpreted it as being applicable only to buyers who, like those in *Swift*, were acting as agents of their employers. The court found that the buyers in the case before it, who were employed by meat markets, were "so identified with employee and Union activity as to be within the statutory meaning of 'employees' for purposes of section 8(b)(4)(A)." *Amalgamated Meat Cutters, Local 88* v. *National Labor Relations Board*, 237 F. 2d 20, 27 (C.A. D.C.), certiorari denied, 352 U.S. 1015.

that lies primarily in the informed discretion of the administrative agency" (*id.* at 203).

National Labor Relations Board v. *Wyman-Gordon Co.*, 394 U.S. 759, reaffirmed these principles. The plurality opinion there recognized that "[a]djudicated cases may and do, of course, serve as vehicles for the formulation of agency policies, which are applied and announced therein" (*id.* at 765). The concurring opinion of three other Justices emphasized that Congress had given the Board both quasi-legislative and quasi-judicial powers, that "[n]o language in the National Labor Relations Act requires that the grant or the exercise of one power was intended to exclude the Board's use of the other," and that the choice between the two "lies primarily in the informed discretion of the administrative agency" (*id.* at 771–772).[9]

b. The Board acted reasonably in determining the status of the Company's buyers in an adjudicatory, rather than a rule-making, proceeding. The court below assumed that the Board was "prescribing a new policy, not just with respect to 25 buyers in Wheatfield, N.Y., but * * * 'to fit all cases at all times' "

[9] The factor in *Wyman-Gordon* which disturbed the four Justices who subscribed to the plurality opinion, and caused two Justices to dissent, was not that the Board had formulated the name and address requirement in an adjudicatory proceeding, the *Excelsior* case. Rather, it was that, by declining to apply the requirement in the *Excelsior* case itself, and instead directing that it be applicable to all election proceedings arising 30 days thereafter, the Board appeared to be engaging in rule-making without complying with Section 4 of the Administrative Procedure Act. See 394 U.S. at 763–765, 775–777, 780–781. No comparable circumstances exists here. The Board, after examining the facts of this particular case, made a determination that the duties of the Company's buyers were not such as would be likely to create a conflict of interest and thus deprive them of the protection of the Act.

(Pet. App. A, p. 43). As shown (pp. 8–10), however, the Board's view that managerial employees, while properly excluded from certain bargaining units are not automatically excluded from the Act's coverage, is not novel, and the contrary view expressed in *Swift* was an abberation.

The inquiry involved in determining whether the Act covers particular managerial employees necessarily must focus on the nature and level of the duties they perform. In addition, the duties of managerial employees will vary from industry to industry, company to company, and even among employees within the same company. For these reasons, the managerial employee question is best decided on a case-by-case basis. The Board repeatedly emphasized that it was following that procedure here (see *supra*, n. 3, p. 5; Pet. App. E, p. 74, A. 261).

5. The decision of the court of appeals has far-reaching consequences. It excludes from the coverage of the Act a large number of employees who are formulating, determining, and effectuating their employer's policies, unless their discretion relates to relatively minor matters or is carefully limited by existing standards. The court below acknowledged that "[t]here must be tens of thousands of manufacturing, wholesale and retail units which employ buyers, and

[10] Since this Court's decision in *Wyman-Gordon*, the Board has instituted rule-making proceedings in those areas where, in its judgment, they were appropriate—*i.e.*, the promulgation of standards for the exercise of jurisdiction over private colleges and universities, the horseracing and dogracing industries, and symphony orchestras (see Pet. App. A, p. 40, n. 14).

hundreds of thousands of the latter" (Pet. App. A, p. 43). Buyers, of course, comprise only one of the many groups of employees concerned with formulating or effectuating the employer's policies.

By requiring the Board to conduct a rule-making proceeding to determine the application of the Act to buyers, the court below has required the Board to follow a procedure which is likely to impede, rather than enhance, a prompt resolution of that question. In view of the large number of buyers in American industry and the various functions they perform, a proceeding which attempts to formulate criteria to govern the entire class is likely to produce only broad general standards. Those standards are likely to be of little utility until they acquire concrete meaning through application to particular factual situations. The decision below is thus likely to delay the prompt enforcement of the Act and to produce substantial additional litigation which would be avoided by the Board's settled practice of deciding the applicability of the Act to particular types of employees on a case-by-case basis.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

PETER G. NASH,
General Counsel,

JOHN S. IRVING,
Deputy General Counsel,

PATRICK HARDIN,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,

LINDA SHER,
Attorney,
National Labor Relations Board.

MAY 1973.

APPENDIX A

United States Court of Appeals for the Second Circuit

Nos. 351, 352—September Term, 1972.

(Argued January 17, 1973 Decided February 28, 1973)

Docket Nos. 72-1703—72-1860

BELL AEROSPACE COMPANY DIVISION OF TEXTRON, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Before FRIENDLY, *Chief Judge,* OAKES AND TIMBERS, *Circuit Judges.*

Petition to review and cross-petition to enforce an order of the National Labor Relations Board, 197 N.L.R.B. No. 30 (1972), finding that Bell Aerospace Company Division of Textron, Inc., had violated § 8(a)(5) and (1) of the National Labor Relations Act by refusing to bargain with a union representing buyers. See 190 N.L.R.B. No. 66 (1971) and 196 N.L.R.B. No. 127 (1972). Remanded for a rule-making proceeding.

FRIENDLY, *Chief Judge:*

I

A petition by the Bell Aerospace Company Division of Textron Inc. (Bell) to review and a cross-petition

by the National Labor Relations Board to enforce a bargaining order, 197 N.L.R.B. No. 30 (1972), put in question the Board's earlier order in a representation case, 190 N.L.R.B. No. 66 (1971), *adhered to on a denial of reconsideration,* 196 N.L.R.B. No. 12*1* (1972). The representation order found that 25 buyers in Bell's Department 121 constituted an appropriate unit and directed an election, which was won by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Amalgamated Local 1286 (the Union). Bell refused to recognize the Union on the ground that the buyers were managerial employees and, as such, were not employees protected by §§ 7 and 8(a) of the National Labor Relations Act.

There is not much dispute about the facts: The buyers have full discretion, without limit in dollar amount, in selecting prospective vendors, preparing invitations to bid, evaluating bids, negotiating prices and terms, and preparing purchase orders. They execute all purchase orders up to $50,000, although they must obtain the approval of a superior for any commitment exceeding $5,000.[1] Many purchases are "off the shelf" items, which are made in quantity for the general public and can be purchased from a number of distributors or sources; many are not. In some instances other Bell employees (many of them organized) or a subcontractor will have tentatively selected a vendor, and the buyer must get approval before seeking a different one. For the Minute Man project, which represents about 70% of Bell's sales,

[1] Despite this limitation, the amount of company credit which a buyer can commit on his own authority is very substantial. For one buyer this was $1,351,983 in a 19-month period; during the same period, the aggregate amount of credit committed by the buyers without higher approval was $7,671,172.

major decisions are made by a team consisting of supervisory type personnel[2] from the engineering, quality assurance, manufacturing and finance departments; the buyer is team chairman and signs the purchase forms but a supervisor from pricing and negotiations participates in working out the terms. Once agreement is reached, the buyer is responsible for seeing that contracts are complied with and adjusting disputes. Where the amount is less than $5,000, the buyer has authority to cancel a contract and place the order with an alternate vendor.

The case first came before the Board by transfer from the Regional Director in October, 1970. On May 20, 1971, a unanimous Board issued a direction of election, 190 N.L.R.B. No. 66, relying heavily on its recent decision in *North Arkansas Electric Cooperative, Inc.*, 185 N.L.R.B. No. 83 (1970). *North Arkansas* concerned the discharge of one Lenox, an "electrification advisor," who had been discharged for failing to remain neutral during a union organizational campaign. On the Board's application for enforcement of an earlier order requiring reinstatement, 168 N.L.R.B. 921 (1967), the Eighth Circuit held that the Board's determination that Lenox was not a "managerial employee" was in error but remanded for determination whether his discharge was nevertheless in violation of the National Labor Rela-

[2] Supervisors are excluded from the National Labor Relations Act's definition of employee. See 29 U.S.C. § 152(3). Supervisors are defined as "having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." *Id.* § 152(11).

tions Act, *NLRB* v. *North Arkansas Electric Cooperative, Inc.*, 412 F.2d 324 (8 Cir. 1969).[3] The Board, on remand, held that the Act's protections extended to most managerial employees in general and to Lenox in particular, *North Arkansas Electric Cooperative, Inc., supra*, 185 N.L.R.B. No. 83.[4] This disposed, as far as the Board was concerned, of what had been Bell's prime contention in the instant case, namely, that the buyers did not constitute an appropriate unit for col-

[3] The court, convinced that had the question of Lenox's managerial status arisen in the context of a representation proceeding, the Board, in accordance with its prior decisions, would have excluded him from the bargaining unit as a "managerial employee," said that the Board could not "irrespective of the illegality or unfairness of the discharge, be permitted to reach a different result because the question is presented in the context of unfair labor practice." 412 F.2d at 328. However, in remanding to the Board, the court left open the question whether a "managerial employee," while normally excluded from bargaining units of rank and file employees, might under some circumstances be protected from his employer's unfair labor practices. *Id.* at 325.

[4] The Board's rationale was that an employee might be "managerial" insofar as he did not have "the requisite community of interest" with other employees to be included with them in a proposed unit, yet might still fall within the Act's definition of employee and therefore be entitled to its protections. At the same time, however, the Board indicated that certain categories of managerial personnel would not be considered within the definition of employee and therefore not receive any of the Act's protections—namely, those employees who participated in formulating, determining or effectuating policy with respect to employee relation matters, who had apparent authority in that area, or who had a conflict of interest between proper performance of their jobs and their right to engage in concerted activity. The Board found that Lenox did not fit into any of these categories.

In footnote 8 of its decision, the Board overruled *Swift & Co.*, 115 N.L.R.B. 752 (1956), to the extent that it was inconsistent with its views. See discussion, *infra*.

lective bargaining within § 9(b) since they were managerial employees,[5] the Board proceeded to reject the alternative contention "that buyers, whether considered managerial or not, are to be denied representation because there would exist a potential conflict of interest between the buyers as union members and the Employer"—notably by preferring unionized vendors and influencing "make or buy" decisions in favor of "make," thus creating additional work for sister unions in the plant.[6]

On the very day on which the Board certified the Union, the Eighth Circuit denied enforcement of the Board's second order in *NLRB* v. *North Arkansas Electric,* 446 F.2d 602 (8 Cir. 1971). On the basis of a review of the legislative history of the Taft-Hartley Act, 446 F.2d at 605–08, and of court decisions with respect to application of the Act to "managerial employees," the court held that Congress did not intend the word "employee" to embrace them.[7] No application was made for certiorari.

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[5] Although the Board in *North Arkansas Electric Cooperative, Inc., supra,* 185 N.L.R.B. No. 83, had indicated a continuing adherence to its policy of excluding managerial employees from bargaining units of rank and file personnel because of a lack of "community of interest," the Board, in the instant case, apparently felt that no such consideration opposed formation of a separate unit of buyers.

[6] The decision does not make clear whether the Board regarded the buyers as managerial employees. Footnote 2 shows that Member Jenkins thought they weren't but Member Kennedy thought they were. Footnote 3 indicates that the three other members also thought the latter.

[7] The court rejected the Board's attempt to reformulate the definition of "managerial employee," and decried any notion that an employee could be considered within the Act's definition of "employee" for the purpose of being protected from firing by his employer for participating in union activity but not for the purpose of organization in a proper bargaining unit. 446 F.2d at 609–10; see n.4 *supra.*

Predictably Bell moved for reconsideration, which the Board denied in another opinion, 196 N.L.R.B. No. 127 (1972). Disagreeing with the breadth of the Eighth Circuit's opinion, the Board restated the position it had taken in *North Arkansas*. See fn. 4 *supra*. It held that managerial employees were excluded from coverage only if they make "determinations which should be made free of any conflict of interest which could arise if the person involved was a participating member of a labor organization." This category included not only "those concerned with management policies in the labor relations area," but also those having "responsibility with respect to policies which are inextricably intertwined and of necessity affect or infringe upon the labor relations area." It gave as an example "a corporate representative, charged with the duty of determining where an employer's plants should be located or what capital expenditures a corporation ought to make" if he had "broad managerial discretion." The same might be true of "those bearing primary responsibility for determination of financial policies, or even those charged with the direction of basic policies in the field of research and development." The Board emphasized that the question whether "the probabilities of such conflict are sufficiently minimal" was to be determined on the facts of each case.

II

The issue here tendered must be considered in light of the confusing pattern of Board decisions before and after enactment of the Taft-Hartley Act in 1947, 61 Stat. 136 *et seq.*, and the less than pellucid legislative history of the provision of that statute that is here relevant.

The concept of the "managerial employee" seems to have first arisen in National Labor Relations Act cases in which either employers or unions argued for the exclusion from proposed larger bargaining units of certain employees with a close relationship to management. In *Julian P. Friez & Sons,* 47 N.L.R.B. 43, 47 (1943), the Board ruled that employees, who were charged with expediting the completion of orders and assuring adherence to production time schedules, were "closely related to the management," and therefore should be excluded from a unit of production and maintenance employees. Expediters, who contacted vendors, placed orders, kept records of the progress of deliveries and had authority to reassign orders, were excluded from a unit of office, clerical, technical and professional employees in *Spicer Manufacturing Corp.,* 55 N.L.R.B. 1491, 1498 (1944), because "the authority possessed by these employees to exercise their discretion in making commitments on behalf of the Company stamps them as managerial." See also *Rex Manufacturing Co., Inc.,* 7 N.L.R.B. 95, 99 (1938); *Westinghouse Air Brake Co.,* 64 N.L.R.B. 547, 553 (1945); *Electric Controller & Manufacturing Co.,* 69 N.L.R.B. 1242, 1245–46 (1946). In a number of cases this principle as applied to buyers. See, *e.g., Hudson Motor Car Co.,* 55 N.L.R.B. 509, 512 (1944): *Vulcan Corp.,* 58 N.L.R.B. 733, 736 (1944); *Barrett Division Allied Chem. & Dye Corp.,* 65 N.L.R.B. 903, 905 (1946). Shortly before enactment of the Taft-Hartley amendments, the Board summed up its position as regards "managerial employees" in *Ford Motor Co.,* 66 N.L.R.B. 1317, 1322 (1946) (footnote omitted):

> We have customarily excluded from bargaining units of rank and file workers executive employees who are in a position to formulate, determine, and effectuate management policies.

> These employees we have considered and still deem to be "managerial," in that they express and make operative the decisions of management.

While the Board's policy was clearly not to permit managerial employees to join units of rank and file personnel, the Board nonetheless viewed at least minor managerial employees as within the Act's definition of "employee." In an early decision, the NLRB, holding that a dispatcher was an "employee" and therefore protected by the Act against his employer's unfair labor practices, said:

> [The employee's] position as dispatcher . . . was of a minor supervisory character. Although antiunion conduct of managerial or supervisory employees has been repeatedly held to be proof that the employer has engaged in unfair labor practices, it does not follow that managerial or supervisory employees are not employees within the meaning of Section 2(3) of the Act. The statutory definition is of wide comprehension.

Atlantic Greyhound Corp., 7 N.L.R.B. 1189, 1196 (1938) (footnote omitted). And in *Dravo Corp.*, 54 N.L.R.B. 1174 (1944), a case in which the Board excluded buyers and expediters from a unit of office and clerical workers, it stated:

> Since the work of both buyers and expediters requires much greater initiative and more direct contact with outsiders, and is of a much more responsible nature than that of employees in categories which the parties would include in the unit, we are of the opinion that it would best serve the policies and purposes of the Act to exclude the buyers and expediters from the . . . unit. *This is not to say, however, that buyers and expediters are to be denied the right to self-organization and to collective bargaining under the Act.* The precise relationship

> of the buyers and expediters to management here is not now being determined by us.

Id. at 1177 (emphasis added).

The Board took a somewhat different tack in *Maryland Drydock Co.*, 49 N.L.R.B. 733 (1943), where it found that a *separate* union of supervisory personnel would not constitute an appropriate unit for collective bargaining, although still insisting that a supervisor was an "employee" as defined by the Act, *id.* 737–38. See *Packard Motor Co.*, 64 N.L.R.B. 1212, 1214 (1945) (Herzog, Chairman, concurring); *Packard Motor Co.* v. *NLRB*, 330 U.S. 485, 492 n.3 (1947). Similarly, in *Yale & Towne Manufacturing Co.*, 60 N.L.R.B. 626 (1945), *overruled in other respects, Ford Motor Co., supra,* 66 N.L.R.B. at 1322 n.12, the Board found the interests of certain time-study employees were sufficiently akin to those of management that the employees "should neither be included in a unit with other employees, *nor established as a separate unit.*" *Id.* at 628–29.

Maryland Drydock was overruled in *Packard Motor Co.*, 61 N.L.R.B. 4, 64 N.L.R.B. 1212 (1945), and the Board's decision that foremen were "employees" whom the Act entitled to form their own union was approved by the Supreme Court, *Packard Motor Co.* v. *NLRB, supra,* 330 U.S. 485, *aff'g* 157 F. 2d 80 (6 Cir. 1946). Since an important purpose of Congress in passing the Taft-Hartley amendments was to overturn that decision, see H.R. Rep. No. 245, 80th Cong., 1st Sess. 13–14, 17 (1947) and S. Rep. No. 105, 80th Cong., 1st Sess. 3–5 (1947), the dissenting opinion in *Packard* is more than ordinarily important. Mr. Justice Douglas, joined by Chief Justice Vinson and Justice Burton, there wrote, 330 U.S. at 494:

> For if foremen are "employees" within the meaning of the National Labor Relations Act, so are vice-presidents, managers, assistant managers, superintendents, assistant superintendents—indeed, all who are on the payroll of the company, including the president; all who are commonly referred to as the management, with the exception of the directors. If a union of vice-presidents applied for recognition as a collective bargaining agency, I do not see how we could deny it and yet allow the present application.

Arguing that, when Congress desired to include supervisory personnel in a category of employees, it knew how to do so, he called attention to other statutes *in pari materia* which, unlike the National Labor Relations Act, defined "employee" to include a "subordinate official," Railway Labor Act of 1926, 44 Stat. 577; Merchant Marine Act of 1936, 52 Stat. 953, 966.

As indicated, the introduction of H.R. 3020 in 1947 represented, in part, a reaction to the holdings in the *Packard Motor Co.* decisions that supervisory personnel constituted an appropriate unit for collective bargaining. The Bill excluded from the definition of employees not only those traditionally defined by the Board as supervisors, namely, those employees with power to hire, transfer, promote, discharge, reward, or discipline other employees, or to effectively recommend such action, see *Ford Motor Co.*, 66 N.L.R.B. 1317, 1325 (1946) and S. Rep. No. 105, *supra*, at 4, but also (1) personnel who fix or make effective recommendations with respect to the amount of wages earned by other employees, and those who make effective recommendations with respect to the application of factors upon which wages are determined, (2) labor relations, time-study, police and guard personnel, and (3) confidential employees. The Bill defined the latter

as any employee "who by the nature of his duties is given by the employer information that is of a confidential nature, and that is not available to the public, to competitors, or to employees generally, for use in the interest of the employer." The Committee Report accompanying the bill expressed concern over evidence that in those plants where foremen had been permitted to organize, more work stoppages occurred and productivity dropped. H.R. Rep. No. 245, *supra,* at 14–15.

The definition of supervisor contained in the Senate bill, S. 1126, was more narrowly drawn, paralleling that which had been established by the Board:

> The term "supervisor" means any individual having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or to adjust their grievances, or effectively to recommend such action if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

But while the Senate Committee was concerned with distinguishing between supervisors vested with "genuine management prerogatives," such as the power to hire, fire, or discipline other employees, and minor supervisors such as "straw bosses, leadmen, [and] set-up men," it expressed the same concerns that had been voiced by the House Committee over the granting of the Act's protections to supervisory personnel. S. Rep. No. 105, *supra,* at 4–5. The Senate Committee felt that the organization of supervisors had upset the balance of power between labor and management, *id.* at 3, and it wished to prevent conflicts of interest, resulting in lower productivity, less discipline, and a correspondingly higher industrial accident rate, *id.*

503-035—73——3

at 4-5. The Committee's Report, S. Rep. No. 105, *supra*, at 4, also reflected a resire to prevent the possibility, mentioned in Justice Douglas' dissent in *Packard Motor Co.* v. *NLRB*, *supra*, 330 U.S. at 494, that the Supreme Court's reasoning in that case could be used to justify the unionization of vice-presidents.

The Conference Committee agreed to accept the Senate's definition of supervisors.[8] With reference to those additional employees who had been included

[8] The definition contained in S. 1126 had been modified slightly by the Senate. The Senate agreed to an amendment proposed by Senator Flanders which added the phrase "or responsibility to direct them." See 93 Cong. Rec. 4677-78 (1947): n. 2 *supra*.

The Senate had rejected an amendment to S. 1126, proposed by Senator Langer, that would have replaced the "supervisor" exclusion with an exclusion for "an assistant superintendent or superintendent, or any individual occupying a higher supervisory status than assistant superintendent." 93 Cong. Rec. 5117 (1947). A superintendent would have been defined as "any individual who, within power directly delegated by an owner, president, or board of directors, directs, controls, and administers a specific institution, plant, or function and is responsible for the successful outcome of the undertaking, and who works through assistants or subordinate foremen," and "assistant superintendent" as "any individual having authority to regularly assist a superintendent by performing essentially the same duties as the superintendent." *Id.* Although this definition of superintendent bears some resemblance to the definition of "managerial employee" that has been developed by the Board, the Senate's rejection of this amendment should not be viewed as a rejection of the managerial employee exception. Since the effect of this amendment would have been to permit employees of supervisory status lower than assistant superintendents, such as foremen, to organize, rejection of this amendment is more easily explained by a desire to expand the definition of supervisor to include employees such as foremen than by a desire to treat superintendents and their assistants as employees. See 93 Cong. Rec. 5116 (remarks of Sen. Taft opposing the proposed amendment).

within the House but not within the Senate definition, the Report stated:

> In the case of persons working in the labor relations, personnel and employment departments, it was not thought necessary to make specific provision, as was done in the House bill, since the Board has treated, and presumably will continue to treat, such persons as outside the scope of the act. This is the prevailing Board practice with respect to such people as confidential secretaries as well, and it was not the intention of the conferees to alter this practice in any respect. The conference agreement does not treat time-study personnel or guards as supervisors, as did the House bill. Since, however, time-study employees may qualify as professional personnel, the special provisions of the Senate amendment (hereafter discussed) applicable with respect to professional employees will cover many in this category. In the case of guards, the conference agreement does not permit the certification of a labor organization as the bargaining representative of guards if it admits to membership, or is affiliated with any organization that admits to membership, employees other than guards.

H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess. 35–36 (1947).[*]

The best we can make of this history is as follows: The Senate had been persuaded that the House definition would have barred from the protection of the Act too many people who should be within it. But neither the Senate, nor the House in yielding to it, thought the exclusion would be limited to persons precisely fitting the Act's definition of "supervisor." It is quite clear—and the Board does not challenge this—that Congress believed "persons working in the labor rela-

[*] The report was submitted to both houses. 93 Cong. Rec. 6361, 6434 (1947).

tions, personnel and employment departments" would be excluded. However, our sense of the situation is that Congress recognized there were other persons so much more clearly "managerial" that it was inconceivable that the Board would treat them as employees. Surely Congress could not have supposed that, while "confidential secretaries" could not be organized, their bosses could be.[10] In other words, Congress failed to enact the portion of Mr. Justice Douglas' *Packard* dissent relating to the organization of executives, not because it disagreed but because it deemed this unnecessary.

After passage of the Taft-Hartley amendments, the Board at first continued its previous practice of simply excluding "managerial employees" from units of rank and file employees. For example, in *Denver Dry Goods Co.*, 74 N.L.R.B. 1167 (1947), assistant buyers, who were required to set good sales records as examples to other employees, assist buyers in various matters such as the selection of merchandise, and take over the buyers' duties when the latter were absent, were excluded from a unit of sales, clerical and office employees, because their interests were "more closely identified with those of management." The Board stated its policy in *Palace Laundry Dry Cleaning Corp.*, 75 N.L.R.B. 320, 323 n.4 (1947), a case in which the Board refused to exclude store managers from a store-wide bargaining unit because they were neither managerial nor supervisory employees:

[10] We think that when the Conference Report referred to "confidential secretaries," it used that term with the same meaning which H.R. 3020, as reported, had spelled out for "confidential employees," even though in 1946, the Board had narrowed its definition of confidential employees to those "who exercise 'managerial' functions in the field of labor relations," *Ford Motor Co.*, 66 N.L.R.B. 1317, 1322.

> We have in the past, and before the passage of the recent amendments to the Act, recognized and defined as "managerial" employees, executives who formulate and effectuate management policies by expressing and making operative the decisions of their employer, and have excluded such managerial employees from bargaining units. . . . We believe the Act, as amended, contemplates the continuance of this practice.

The same policy was followed with respect to buyers in *Denton's Inc.*, 83 N.L.R.B. 35, 37 (1949).

In the 1950's the Board went further. In *American Locomotive Co.*, 92 N.L.R.B. 115 (1950), a case in which buyers were excluded from an office and clerical unit because they were authorized to negotiate for credit and to make substantial purchases for their employer, the Board said that, since they were managerial employees, the buyers could "not be accorded bargaining rights under the Act." *Id.* at 117. Then in 1956, the Board, finding a separate unit of procurement drivers, who kept supplies of produce coming into their employer's plant and exercised discretion in meeting competitors' prices, to be an inappropriate unit for collective bargaining because their interests were "allied with management," *Swift & Co.*, 115 N.L.R.B. 752, stated:

> It was the clear intent of Congress to exclude from the coverage of the Act all individuals allied with management. Such individuals cannot be deemed to be employees for the purposes of the Act.

Id. at 753–54 (footnote omitted).[11] Such was the Board's announced understanding with respect not

[11] In many other cases the Board excluded buyers from units of rank-and-file employees on the ground that they were "managerial" since they could effectively commit their employer's credit. For example:

only to "managerial employees" generally but also to buyers specifically when Congress again extensively amended the National Labor Relations Act in 1959, 73 Stat. 519 *et seq.*

The effect to be given such a history is a delicate and difficult question. *Cf. Francis* v. *Southern Pacific Co.*, 333 U.S. 445, 450 (1948). Viewing more than thirty years of failure by the Federal Trade Commission to assert power over instrastate acts of unfair competition because of their adverse effect on interstate commerce, the Court refused, in *FTC* v. *Bunte Brothers, Inc.*, 312 U.S. 349 (1941), to sanction any such power, despite the famous contrary precedent with respect to the Interstate Commerce Commission in the *Shreveport Case*, 234 U.S. 342 (1914). Mr. Justice Frankfurter wrote, 312 U.S. at 352.

> Authority actually granted by Congress of course cannot evaporate through lack of ad-

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"The duties of the assistant purchasing agent and the buyer include, among others, the placing of orders for various items of supplies and equipment. It appears that they effectively bind the Employer's credit in the regular course of their work. In accordance with established Board practice, we find these employees are managerical employees, and we shall therefore exclude them from the unit."

Florence Stove Co., 98 N.L.R.B. 16, 17 (1952) (footnote omitted). See also *Howard-Cooper Corp.*, 105 N.L.R.B. 753, 754 (1953); *American Lithofold Corp.*, 107 N.L.R.B. 1061, 1063 (1954); *Temco Aircraft Corp.*, 121 N.L.R.B. 1085, 1089 (1958); *Weaver Motors*, 123 N.L.R.B. 209, 215–16 (1959); *Ed's Foodland of Springfield, Inc.*, 159 N.L.R.B. 1256, 1260 (1966). In other cases, the Board has done this on the basis of more specific findings about the buyer's powers. See *Mack Trucks, Inc.*, 116 N.L.R.B. 1576, 1577–78 (1956); *Kearney & Trecker Corp.*, 121 N.L.R.B. 817, 822 (1958); *Federal Tel. and Radio Co.*, 120 N.L.R.B. 1652, 1653–4 (1958); *Albuquerque Division, ACF Industries, Inc.*, 145 N.L.R.B. 403, 414–15 (1963).

> ministrative exercise. But just as established practice may shed light on the extent of power conveyed by general statutory language, so the want of assertion of power by those who presumably would be alert to exercise it, is equally significant in determining whether such power was actually conferred.

On the other hand, again speaking for the Court, the same Justice said, in *NLRB* v. *Seven-Up Bottling Co. of Miami, Inc.*, 344 U.S. 344, 351–52 (1953), with respect to a post-Taft-Hartley change, in *F. W. Woolworth Co.*, 90 N.L.R.B. 289 (1950), in the method of computing back pay:

> Assuming Congress was aware of the Board's pre-*Woolworth* practice of calculating back pay on the basis of the entire period from discharge to offer of reinstatement, we could say here, as we did in *Gullett Gin* [340 U.S. 361, 366 (1951)], that Congress by its reenactment indicated its agreement that the Board's practice was authorized. That leads us nowhere on the present issue, though it is only this far that what we said in *Gullett Gin* can lead us. In that case as here, again assuming notice, if Congress was satisfied that the Board was acting within its powers, the thing for it to do was what it did—reenact without change. In that case as here—though, of course, we had no occasion to say so in that case—if Congress had been more than satisfied with the Board's practice, if it had wanted to be certain that the Board would not in future profit by its experience, it would have had to do more than it did; it would have had to change the language of the statute so as to take from the Board the discretionary power to mould remedies suited to

> practical needs which we had declared the Board to have and which the Board was asserting and exercising. We cannot infer an intent to withdraw the grant of such power from what is at most a silent approval of specific exercises of it.[12]

Perhaps the best reconciliation of these eminently sensible although seemingly contrary approaches is that when an administrative construction has been long in effect, the agency cannot make a big change, especially after a reenactment or substantial amendment, but can make smaller ones.

The conclusion we reach from all of the foregoing is this: The 1947 Congress clearly believed that at least some "managerial employees" other than "supervisors" were excluded from the protections of the Act.[13] In 1956 the Board concluded that the Congress had meant to exclude all true "managerial employees." This exclusion embraced not only an employee "so closely related to or aligned with manage-

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[12] We are also not unmindful that it "is at best treacherous to find in Congressional silence *alone* the adoption of a controlling rule of law." (Emphasis supplied.) *Girouard* v. *United States*, 328 U.S. 61, 69 (1946), *quoted in Boys Markets, Inc.* v. *Local 770, Retail Clerks Union*, 398 U.S. 235, 241–42 (1970).

[13] Congress may have misapprehended the Board's pre-1947 practice with regard to confidential employees. As indicated in the case cited in fn.10, the Board had apparently excluded such employees from bargaining units of rank and file personnel but had not ruled that they were unprotected by the Act. Thus, when the Conference Committee stated that the Board had treated these employees "as outside the scope of the act," it may have been in error. Nevertheless, since Congress' reason for not expanding the definition of supervisor was its belief that existing Board practices made this unnecessary, that intent should be given effect. See *NLRB* v. *Wheeling Elec. Co.*, 444 F.2d 783 (4 Cir. 1971).

ment as to place the employee in a position of conflict of interest between his employer on the one hand and his fellow workers on the other" but also one who is "formulating, determining and effectuating his employer's policies or has discretion, independent of an employer's established policy, in the performance of his duties," *Illinois State Journal-Register, Inc.* v. *NLRB,* 412 F.2d 37, 41 (7 Cir. 1969). Both because of what we believe to have been the understanding of the 1947 Congress and because the Board's interpretation of it had been so clearly defined for the 1959 Congress, the Board is not now free to decide the contrary. In this respect we follow the illuminating opinion of Judge Craven, dealing with a confidential secretary, in *NLRB* v. *Wheeling Electric Co.,* 444 F.2d 783 (4 Cir. 1971), and the Eighth Circuit's decision in *North Arkansas Electric, supra,* 446 F.2d 602, although we do not agree with everything said in the latter case. On the other hand, despite the series of decision, see fn.11, typified by *Swift & Co., supra,* 115 N.L.R.B. 752, we do not think the Board would be precluded, on proper proceedings, from determining that buyers, or some types of buyers, are not true "managerial employees" and consequently come within the protection of § 8(a) (5) and (1).

III

It might seem that this conclusion would lead to the grant of enforcement here, since there was substantial evidence that Bell's buyers were not sufficiently high in the hierarchy to constitute "managerial employees," as that term has been defined not only in *Illinois State Journal-Register* v. *NLRB, supra,* but also in such other cases as *International Ladies' Garment Workers' Union* v. *NLRB,* 339 F.2d 116, 123 (2 Cir. 1964) (Marshall, J.); *Retail Clerks International*

Association v. *NLRB*, 366 F.2d 642, 644–45 (D.C. Cir. 1966), *cert. denied*, 386 U.S. 1017 (1967) (Burger, J.); and *Westinghouse Electric Corp.* v. *NLRB*, 424 F.2d 1151, 1158 (7 Cir.), *cert. denied*, 400 U.S. 831 (1970) (Fairchild, J.). See also *Continental Ins. Co.* v. *NLRB*, 409 F.2d 727, 730 (2 Cir.), *cert. denied*, 396 U.S. 902 (1969). It does not, for two reasons:

The first is that we cannot be sure that the Board's decision rested on such a factual determination rather than on its new and, in our view, erroneous holding that it was free to regard *all* managerial employees as covered by the Act unless their duties met the "fundamental touchstone" of including "determinations which should be made free of any conflict of interest which could arise if the person involved was a participating member of a labor organization," see fn. 6 *supra*. This requires reversal and remand under the first decision in *SEC* v. *Chenery Corp.*, 318 U.S. 80, 95 (1943), recently reaffirmed in *FTC* v. *Sperry & Hutchinson Co.*, 405 U.S. 233, 249 (1972).

The second is that, while the Board was not precluded from reversing itself on the position that buyers, or some buyers, were not "managerial employees," we hold that, particularly in light of the justified contrary belief the Board had engendered, it could not do this in the manner that was done here. This is an appropriate case in which to give effect to the Supreme Court's observation in the second *Chenery* decision, 332 U.S. 194, 202 (1947), largerly disregarded by the Board for a quarter century:[14]

[14] At argument we asked counsel for the Board to advise us in writing whether it had ever engaged in the rule-making on substantive matters contemplated by § 4 of the Administrative Procedure Act, 5 U.S.C. § 553. In a memorandum dated February 12, 1973, counsel advised us that the Board has recently concluded one such proceeding by promulgating a standard for the exercise of jurisdiction over private colleges and universi-

> The function of filling in the interstices of the Act should be performed, as much as possible, through this quasi-legislative promulgation of rules to be applied in the future.

Such a holding is also in line with the considered dicta in *NLRB* v. *Wyman-Gordon Co.*, 394 U.S. 759 (1969).

Although the precise issues in *Wyman-Gordon* were whether a direction made in a previous decision, *Excelsior Underwear Inc.*, 156 N.L.R.B. 1236 (1966), that was to apply prospectively only, in fact constituted rule-making, which, if such, clearly had not been accomplished as provided in section 4 of the APA, and, if so, whether this invalidated an order, based on the prior decision, in a subsequent adjudicative proceeding, expressions by a majority of the Justices point against the procedure the Board followed here. The plurality opinion of Mr. Justice Fortas, joined by the Chief Justice, Mr. Justice Stewart and Mr. Justice White, emphasized, 394 U.S. at 764:

> The rule-making provisions of that Act, which the Board would avoid, were designed to assure fairness and mature consideration of rules of general application. . . . They may not be avoided by the process of making rules in the course of adjudicatory proceedings.

Mr. Justice Douglas, dissenting from the holding that the Board's violation in *Excelsior* had been cured in *Wyman-Gordon* because the rule adopted in *Excelsior* was being applied as part of a later adjudicative order, said this, 394 U.S. at 777–79 (footnote omitted):

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ties, 35 Fed. Reg. 18370 (1970) and 29 C.F.R. § 103.1. Also in the summer of 1972 the Board published notices of proposed rule-making on the questions whether to assert jurisdiction over the horseracing and dogracing industries and over symphony orchestras and, if so, what the standard should be. 37 Fed. Reg. 14242, 16818.

> A rule like the one in *Excelsior* is designed to fit all cases at all times. It is not particularized to special facts. It is a statement of far-reaching policy covering all future representation elections.
>
> It should therefore have been put down for the public hearing prescribed by the Act.
>
> The rule-making procedure performs important functions. It gives notice to an entire segment of society of those controls or regimentation that is forthcoming. It gives an opportunity for persons affected to be heard. . . .
>
> Agencies discover [through rule-making proceedings] that they are not always repositories of ultimate wisdom; they learn from the suggestions of outsiders and often benefit from that advice.
>
> * * * * *
>
> I would hold the agencies governed by the rule-making procedure strictly to its requirements and not allow them to play fast and loose as the National Labor Relations Board apparently likes to do.

Mr. Justice Harlan, likewise dissenting, after pointing to the Board's decision to apply the *Excelsior* rule only prospectively as implying that it was "such a departure from pre-existing understandings that it would be unfair to impose the rule upon the parties in pending matters," 394 U.S. at 780–81, continued:

> [I]t is precisely in these situations, in which established patterns of conduct are revolutionized, that rule-making procedures perform the vital functions that my Brother Douglas describes so well in a dissenting opinion with which I basically agree.
>
> * * * * *
>
> Either the rule-making provisions are to be enforced or they are not. Before the Board may be permitted to adopt a rule that so signifi-

cantly alters pre-existing labor-management understandings, it must be required to conduct a satisfactory rule-making proceeding, so that it will have the benefit of wide-ranging argument before it enacts its proposed solution to an important problem.

Despite all this, *Wyman-Gordon* does not supply a bright line for determining just when the Board, or other agencies, must proceed by rule-making. See Bernstein, The NLRB's Adjudication-Rule Making Dilemma. Under the Administrative Procedure Act, 79 Yale L.J. 571 (1970). Certainly the decision does not proscribe the use of adjudication as a vehicle for the formulation of new agency policies, which "are applied and announced therein" and "generally provide a guide to action that the agency may be expected to take in future cases." 394 U.S. at 765–66 (Fortas, J.). But if the statements quoted from the opinions of six Justices in *Wyman-Gordon* are to mean anything, they must be read as demanding rule-making here, and, given the Board's long-standing negative attitude, as requiring a court to order it. The Board was prescribing a new policy, not just with respect to 25 buyers in Wheatfield, N.Y., but in substance, to use Mr. Justice Douglas' phrase, "to fit all cases at all times." 394 U.S. at 777. There must be tens of thousands of manufacturing, wholesale and retail units which employ buyers, and hundreds of thousands of the latter. Yet the Board did not even attempt to inform industry and labor organizations, by means providing some notice though not in conformity with section 4, of its proposed new policy and to invite comment thereon, as it has sometimes done in the past, see Peck, The Atrophied Rule-Making Powers of the National Labor Relations Board, 70 Yale L.J. 729, 756–57 (1961), and did in *Excelsior,* 156 N.L.R.B. at 1238, without thereby satisfying the Supreme Court,

394 U.S. at 764. Although policy-making by adjudication often cannot be avoided in unfair labor practice cases, since the parties have already acted and the Board must decide one way or the other, there is no such problem in a representation case.[15] Finally, the argument for rule-making is especially strong when the Board is proposing to reverse a long-standing and oft-reiterated policy on which industry and labor have relied.[16] To be sure, the change of policy here in question did not expose an employer to new and unexpected liability, as it would have done in *NLRB* v. *Majestic Weaving Co., Inc.* 355 F.2d 854, 859–61 (2 Cir. 1966).[17] The point rather is that when the Board has so long been committed to a position, it should be

[15] While nominally this comes before us as an unfair labor practice case, in substance the attack is on the Board's decision, unreviewable at the time, in the representation proceeding.

[16] Although *Swift & Co.*, 115 N.L.R.B. 752 (1956), may be the only case in which the Board had squarely held that buyers were not entitled to organize in a union separate from rank-and-file employees, the reasoning of the many decisions in fn.11 necessarily led to that result so long as the Board classified almost all buyers as "managerial employees."

A number of the decisions that have upheld the Board's reversing prior decisions in adjudicative proceedings have been in situations where the Board has merely prescribed a stricter remedy. See, *e.g.*, *NLRB* v. *A.P.W. Products Co.*, 316 F.2d 899, 905 (2 Cir. 1963) (retroactively overruling decisions that back pay awards are tolled by examiner's finding of non-violation); *cf International Union of Elec., Radio and Mach. Workers*, 426 F.2d 1243 (D.C. Cir.), *cert. denied*, 400 U.S. 930 (1970); *H. & F. Binch Co. Plant of Native Laces* v. *NLRB*, 456 F.2d 357, 364–65 (2 Cir. 1972) (enlarging reinstatement rights of economic strikers).

[17] In the *Binch* case, *supra* note 16, we sustained retroactive application of the Board's decision in *The Laidlaw Corporation*, 171 N.L.R.B. No. 172 (1968), *enforced*, 414 F.2d 99 (7 Cir. 1969), *cert. denied*, 397 U.S. 920 (1970), mainly because it had been presaged by an earlier Supreme Court decision.

particularly sure that it has all available information before adopting another, in a setting where nothing stands in the way of a rule-making proceeding except the Board's congenital disinclination to follow a procedure which, as said in *Texaco, Inc.* v. *FPC*, 412 F.2d 740, 744 (3 Cir. 1969), "enables the agency promulgating the rule to educate itself before establishing rules and procedures which have a substantial impact on those regulated," despite the Court's pointed admonitions.[18]

The petition to review is granted and enforcement is denied to the extent that the cause is remanded to the Board for further proceedings consistent with this opinion. No costs.

[18] In March 1970 Professor Bernstein proposed "a two-year moratorium on APA rule-making requirements, during which the Board and its special public canvass their alternatives and seek suitable adjustments." *Supra*, 79 Yale L.J. at 620–21. Nearly three years have passed, without significant result.

APPENDIX B

JUDGMENT

United States Court of Appeals for the Second Circuit

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-eighth day of February one thousand nine hundred and seventy-three.

Present: Hon. HENRY J. FRIENDLY, *Chief Judge,* Hon. JAMES L. OAKES, Hon. WILLIAM T. TIMBERS, *Circuit Judges*

BELL AEROSPACE COMPANY DIVISION OF TEXTRON INC.

v.

NATIONAL LABOR RELATIONS BOARD

A petition to review an order of the National Labor Relations Board and a cross-petition to enforce that order.

This cause came on to be heard on a certified list of items comprising the record of the National Labor Relations Board and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the petition to review be and hereby is granted.

It is further ordered, adjudged, and decreed that enforcement of the order of the said Board be and it hereby is denied to the extent that the action be and it hereby is remanded to the said Board for further proceedings without costs consistent with the opinion of this Court.

A. DANIEL FUSARO, *Clerk.*

APPENDIX C

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case 3—CA—4695

BELL AEROSPACE, A DIVISION OF TEXTRON, INC. AND INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AMALGAMATED LOCAL 1286

DECISION AND ORDER

Upon a charge filed on December 2, 1971, by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Amalgamated Local 1286, herein called the Union, and duly served on Bell Aerospace, a Division of Textron, Inc., herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 3, issued a complaint on December 21, 1971, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before a Trial Examiner were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on August 12, 1971, following a Board election in Case 3—RC—4987 the

503-935—73——4

Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about December 9, 1971, and at times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On January 3, 1972, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On February 2, 1972, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on February 9, 1972, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to Notice To Show Cause called Company's Brief in Opposition to Motion for Summary Judgment and in Support of Petition for Reconsideration.

Upon the entire record in this proceeding, the Board makes the following:

RULING ON THE MOTION FOR SUMMARY JUDGMENT

In its answer to the complaint, the Respondent denies the appropriateness of the unit and in its

[1] Official notice is taken of the record in the representation proceeding, Case 3—RC—4987, as the term "record" is defined in Secs. 102.68 and 102.69(f) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938, enfd. 388 F.2d 683 (C.A. 4, 1968); *Golden Age Beverage Co.*, 167 NLRB 151; *Intertype Co.* v. *Penello*, 269 F. Supp. 573 (D.C. Va., 1967); *Follett Corp.*, 164 NLRB 378, enfd. 397 F.2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRA.

response to the Notice To Show Cause, it specifically argues that the unit employees are managerial employees and, as such, are excluded from the coverage of the Act for representational purposes. We find no merit in this position.

Based on the representation hearing in Case 3—RC—4987, the Board issued its Decision and Direction of Election (190 NLRB No. 166) finding that a separate unit of buyers was appropriate for collective-bargaining purposes. The Board rejected the Respondent's two contentions: (1) that the buyers were managerial employees and, as such, not entitled to representation rights under the Act and (2) that an alleged conflict would exist if the buyers, whether managerial or not, were granted representation rights.

In the directed election conducted by the Regional Director on June 16, 1971, the Union received 15 votes, a majority of the 24 votes cast. The Respondent filed timely objections to conduct affecting the results of the election. In substance, the objections alleged that one of the sample ballots had been marked in the "Yes" box and that, since the Respondent had conducted no campaign against the Union and had not attempted to influence the voters, the resulting vote would not have favored the Union if the sample ballot had remained unmarked. After investigating the objections, the Regional Director, on June 28, 1971, issued his Report on Objections recommending that, absent evidence presented by the Respondent or adduced in his investigation that the Union was responsible for the defacement, the objections should be overruled, and the Union be certified.

The Respondent filed with the Board timely exceptions to the Report on Objections reiterating its objections. On August 12, 1971, the Board issued its Sup-

plemental Decision and Certification of Representative, finding that the objections raise no material issue of fact or law which would warrant reversal of the Regional Director's findings and recommendations or require a hearing. Accordingly, the Board certified the Union as exclusive representative of the Respondent's buyers.

Subsequently, the Respondent filed with the Board a Motion for Reconsideration of the Board's Decision and Direction of Election in light of the adverse decision of the United States Court of Appeals for the Eighth Circuit denying enforcement of the Board's Order in *North Arkansas Electric.*[2] In its motion, it argued that, since the Board had relied in the instant representation Case 3—RC—4987 on its decision in *North Arkansas Electric* wherein a "managerial" employee was held entitled to the protection of the Act, and since the court had judged "managerial" employees to be excluded from the protection of the Act, the Board should reconsider its previous decision and dismiss the representation petition. On May 1, 1972, the Board issued its Order Denying Motion (196 NLRB No. 127) in which, after due consideration of the court's opinion in the *North Arkansas Electric* case, it denied the Respondent's Motion for Reconsideration and found again that buyers herein constituted a separate appropriate unit for collective-bargaining purposes. In its response to the Notice To Show Cause the Respondent reiterated its arguments in support of the Motion for Reconsideration.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to reliti-

[2] *North Arkansas Electric Corporation, Inc.* v. *N.L.R.B.*, 466 F.2d 602, denying enforcement, 185 NLRB No. 83.

gate issues which were or could have been litigated in a prior representation proceeding.[3]

All issues raised by the Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. We shall, accordingly, grant the Motion for Summary Judgment.[4]

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a Delaware corporation, has maintained its principal office and place of business at Wheatfield, New York, herein called the Wheatfield

[3] See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67 (f) and 102.69(c).

[4] In its answer to the complaint and in its response to the Notice To Show Cause, the Respondent contends, in effect, that its admitted refusal to bargain was not violative of the Act because the Union's certification was not final in view of the pendency of the Motion for Reconsideration and, therefore, no obligation to bargain arose from the certification. We find no merit in this contention as subsec. 102.65(e) of the Rules and Regulations which deals, *inter alia*, with motions for reconsideration in representation cases, provides in subpar. (3) that "the filing and pendency of a motion under this provision shall not unless so ordered operate to stay the effectiveness of any action taken or directed." See also subsec. 102.48(d) as to the same practice in unfair labor practice cases.

plant, where it is, and has been at all times material, employed in research and development in the design and fabrication of aerospace products. During the past year, the Respondent, in the course and conduct of its business operations, purchased, transferred, and delivered to its Wheatfield plant, goods and materials valued in excess of $50,000 of which goods and materials valued in excess of $50,000 were transported to said plant directly from States of the United States other than the State of New York.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Amalgamated Local 1286, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All buyers in Department 121, the Purchasing and Procurement Department, at the Respondent's Wheatfield, New York, plant, excluding all production and maintenance employees, all office clerical employees, professional employees, guards and supervisors as defined in the Act.

2. The certification

On June 16, 1971, a majority of the employees of Respondent in said unit, in a secret ballot election conducted under the supervision of the Regional Director for Region 3 designated the Union as their representative for the purpose of collective bargaining with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on August 12, 1971, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about November 9, 1971, and at all times thereafter, the Union has requested the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about November 9, 1971, and continuing at all times thereafter to date, the Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that the Respondent has, since November 9, 1971, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate,

and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785; *Commerce Company* d/b/a *Lamar Hotel*, 140 NLRB 226, 229, enfd. 328 F. 2d 600 (C.A. 5), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421, enfd. 350 F. 2d 57 (C.A. 10).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Bell Aerospace, a Division of Textron, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Amalgamated Local 1286, is a labor organization within the meaning of Section 2(5) of the Act.

3. All buyers in Department 121, the Purchasing and Procurement Department, at the Respondent's Wheatfield, New York, plant, excluding all production and maintenance employees, all office clerical employees, professional employees, guards and supervisors as defined in the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since August 12, 1971, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about November 9, 1971, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interefered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Bell

Aerospace, a Division of Textron, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Amalgamated Local 1286, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All buyers in Department 121, the Purchasing and Procurement Department, at the Respondent's Wheatfied, New York, plant, excluding all production and maintenance employees, all office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Wheatfield, New York, plant and location copies of the attached notice marked "Appen-

dix."[5] Copies of said notice, on forms provided by the Regional Director for Region 3, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 3, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C.

[SEAL] EDWARD B. MILLER,
Chairman,

JOHN H. FANNING,
Member,

HOWARD JENKINS, JR.,
Member,

RALPH E. KENNEDY,
Member,

National Labor Relations Board.

[5] In the event that this order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board, an Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Amalgamated Local 1286, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All buyers in Department 121, the Purchasing and Procurement Department, at the Respondent's Wheatfield, New York, plant, excluding all production and maintenance employees, all office clerical employees, professional employees, guards and supervisors as defined in the Act.

BELL AEROSPACE, A DIVISION OF TEXTRON, INC.
(Employer)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Ninth Floor, Federal Building, 111 West Huron Street, Buffalo, New York 14202, Telephone 716—842-3100.

APPENDIX D

DECISION AND DIRECTION OF ELECTION

Case 3-RC-4987

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before James J. Palermo, Hearing Officer. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, by direction of the Regional Director for Region 3, this case was transferred to the National Labor Relations Board for decision. Briefs have been filed by the Employer and the Petitioner.

The Board has reviewed the Hearing Officer's ruling made at the hearing and finds that they are free from prejudicial error. The rulings are hereby affirmed.

Upon the entire record in this case, including the briefs filed by the parties, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organization involved claims to represent certain employees of the Employer.

3. The Petitioner seeks to represent in a single unit all employees in the Purchasing and Procurement Department of the Employer's Wheatfield, New York, plant classified as buyers. However, near the close of the hearing, the Petitioner proposed that if

the buyers alone did not constitute a separate appropriate unit, Petitioner was willing to expand the unit and include certain other employees from the Purchasing and Procurement Department. The Employer maintains that neither unit is appropriate. Its principal opposition to the petition is that the buyers are managerial employees and do not constitute an appropriate unit for purposes of collective bargaining under the Act. With the issuance of the Board's decision in *North Arkansas Electric Cooperative, Inc.*,[1] the Employer has supplemented its position and now maintains that the buyers, whether managerial or not, may not be given representation rights.

In *North Arkansas Electric*, we found that, with the limitations there noted, "managerial" employees are employees within the meaning of the Act and entitled to its protection. In our opinion their *prima facie* status as employees under the Act ordinarily entitles them not only to the protection of the Act, but to the full benefits of the Act and the right to be represented for the purposes of collective bargaining. Therefore, even though, as the Employer argues, the buyers may be "managerial" employees, we are of the view that as employees they are entitled to be represented under the Act, unless there is some cogent reason for denying such representation.[2]

[1] 185 NLRB No. 83.

[2] Member Jenkins sees nothing in the record to support the Employer's contention that these employees exercise managerial functions, and considers them "employees" within the meaning of the Act to the same extent as production and maintenance employees. Member Kennedy is of the view that the Board must find, in this case, that the buyers are managerial employees, to support its conclusion that the buyers constitute an identifiable, homogeneous, and, hence, separately appropriate unit. He would so find in this case.

The Employer contends that there is such a reason. It argues that buyers, whether considered managerial or not, are to be denied representation because there would exist a potential conflict of interest between the buyers as union members and the Employer. Essentially the Employer maintains that the potential conflict is in the fact that the buyers have authority to commit the Employer's credit in enormous aggregate amounts, select vendors, cancel contracts and substitute other vendors, and negotiate purchase prices." In this connection, the Employer argues that if union considerations were to influence the buyers' decisions regarding vendor selection and prices, buyers could be more receptive to bids from union contractors as opposed to non-union contractors and adversley affect the Employer's business. The Employer further contends that the buyers could influence decisions as to "make or buy" items in favor of "make," thus creating additional work for sister unions in the plant and that with the restrictions on hiring and discharging of employees, which might come with certification, it would be at a hardship in dealing with its employees should the above-mentioned events occur.

On the record, we find no merit in the Employer's position. While it is true that the buyers are in a position to commit the Employer's credit, the record reveals that the discretion and latitude for independent action must take place within the confines of the general directions which the Employer has established. Thus policy guides for "make or buy" decisions can clearly be established and enforced, so that any possible temptation to allow sympathy for sister unions to influence such decisions could effectively be controlled the buyers cannot commit the Employer's credit for amounts above $5,000 without the concurrence of

higher authority. Procurement Director Seitz testified regarding the procedure likely to be followed when a buyer recommends a purchase order in excess of $5,000, that "of course as it [the cost] goes up the level of review more people get to look at it. More people get to question it. They question the buyer's discretion, his judgment, how did you arrive at the conclusion this is a good package which he is offering for approval." Nor can they cancel an order and select an alternate vendor without the concurrence of other officials if the amount involved exceeds $5,000. Testimony also tends to show that in many instances the type of item to be procured will limit the buyer to a particular vendor.

Thus the record fails to convince us that the purchasing discretion of the buyer's is either presently so unbridled or potentially so uncontrollable as to create the possible problems of which the Employer complains. The problems raised seem to be more in the nature of unsupported conjecture.

Nor do we find any merit in the Employer's contention that any hiring and discharge restrictions likely to follow certification will affect its ability to deal with the employees. The Employer would still retain the power to discipline or discharge employees for improper performance of duty, subject only to such limitations as he might agree to during negotiations. Experience under the Act indicates no reason to believe that employers generally lightly bargain away their disciplinary control over employees, and we see no reason why any different situation should be contemplated here.

Accordingly, as the evidence before us fails to demonstrate that representation of the buyers would necessarily create a conflict of interest in the circum-

stances here present,[3] and as we have otherwise found that they are entitled to the protection of the Act, we find the Employer's apprehensions insufficient to deprive the buyers of representation. We therefore find that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

4. We find on the basis of the foregoing that the following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All Buyers in Department 121, the Purchasing and Procurement Department, at the Employer's Wheatfield, New York plant, excluding all production and maintenance employees, all office clerical employees, professional employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 30 days from the date below. The Regional Director for Region 3 shall direct and supervise the election, subject to the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not

[3] We are of the view that this is a factual issue, to be determined on the record of each case, in which any particular segment of managerial employees may seek to be represented by a labor organization.

work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.[4] Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by International Union, United Automobile,

[4] In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236; *N. L. R. B. v. Wyman-Gordon Co.*, 394 U.S. 759. Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 3 within 7 days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Aerospace and Agricultural Implement Workers of America, Amalgamated Local 1286.

Dated, Washington, D.C., May 20, 1971.

[SEAL] EDWARD B. MILLER,
Chairman,
JOHN H. FANNING,
Member,
GERALD A. BROWN,
Member,
HOWARD JENKINS, Jr.,
Member,
RALPH E. KENNEDY,
Member,
National Labor Relations Board.

SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to a Decision and Direction of Election [1] issued by the National Labor Relations Board on May 20, 1971, a secret ballot election was conducted by the Regional Director for Region 3 on June 16, 1971, under the direction and supervision of the Regional Director among the employees in the unit found appropriate. At the conclusion of the election, the parties were furnished with a tally of ballots which showed that of approximately 24 eligible voters, 24 cast ballots, of which 15 were for, and 9 against, the Petitioner. Thereafter, the Employer filed timely objections to conduct affecting the results of the election.

In accordance with the Board's Rules and Regulations, the Regional Director investigated the issues raised by the objections, and on June 28, 1971, issued

[1] 190 NLRB No. 66.

his Report on Objections in which he recommended that the objections be overruled and that the participating labor organization be certified as the collective-bargaining representative in the appropriate unit. Thereafter, the Employer filed timely exceptions contending that the Regional Director erred in overruling its objections.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has considered the Regional Director's Report, the exceptions thereto, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Regional Director.[2]

Accordingly, as the objections to the election have been overruled, and as the tally of ballots shows that the Union has received a majority of valid votes cast, we shall certify it as exclusive bargaining representative for the employees in the appropriate unit.

CERTIFICATION OF REPRESENTATIVE.

IT IS HEREBY CERTIFIED that Local 1286, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America has been designated and selected by a majority of the employees employed by the Employer in the unit heretofore found by the Board to be appropriate, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, said labor orga-

[2] In our opinion, the exceptions to the Regional Director's Report on Objections raise no material issue of fact or law which would warrant reversal of the Regional Director's findings and recommendations or require a hearing.

nization is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Dated, Washington, D.C., August 12, 1971.

[SEAL]

JOHN H. FANNING,
Member,

GERALD A. BROWN,
Member,

RALPH E. KENNEDY,
Member,

National Labor Relations Board.

APPENDIX E

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case 3—RC—4987

BELL AEROSPACE COMPANY, DIVISION OF TEXTRON, INC. EMPLOYER, AND INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AMALGAMATED LOCAL 1286, PETITIONER

ORDER DENYING MOTION

This case originally arose upon a petition filed by the Union seeking to represent in a single unit the buyers employed in the Purchasing and Procurement Department of the Employer's Wheatfield, New York, plant. The Employer opposed such a unit, essentially on the grounds that the buyers were managerial employees and as such were not entitled to representation rights under the National Labor Relations Act, as amended. Additionally, the Employer contended that whether or not the buyers were considered managerial, they should not be given representation rights because a potential conflict of interest with management might exist if the buyers were represented by a union.

The National Labor Relations Board, on May 20, 1971, found a unit of buyers appropriate for the purposes of collective bargaining.[1] In answer to the Employer's contentions regarding the buyers' alleged

[1] 190 NLRB No. 66.

managerial status, the Board, citing *North Arkansas Electric Cooperative, Inc.*,[2] stated:

> In *North Arkansas Electric,* we found, with the limitations there noted, "managerial" employees are employees within the meaning of the Act and entitled to its protection. In our opinion, their *prima facie* status as employees under the Act ordinarily entitles them not only to the protection of the Act, but to full benefits of the Act and the right to be represented for the purposes of collective bargaining.

The Board rejected the Employer's further contention that an alleged conflict would exist if the buyers were granted representation rights, and directed an election in the unit found appropriate.[3]

Subsequently, on August 18, 1971, the Employer filed with the Board a Motion for Reconsideration of the Board's Decision and Direction of Election. It argued, in material part, that since the Board's decision herein, the United States Court of Appeals for the Eighth Circuit had occasion to rule on the rights of managerial employees under the Act and judged that "managerial" employees were excluded from the protection of the Act. The court there denied enforcement of the Board's Order in *North Arkansas Electric.*[4] As the Board's decision in *North Arkansas Electric* was relied on to some extent in the Board's finding that a unit of buyers was appropriate in the instant proceeding, the Employer requests that the Board, in the light of the circuit court's decision, re-

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[2] 185 NLRB No. 83.

[3] An election was conducted on June 16, 1971, in which a majority of the employees voted for the Union. On August 12, 1971, the Union was certified as exclusive bargaining agent for the Employer's buyers.

[4] *North Arkansas Electric Corporation, Inc.* v. *N.L.R.B.*, 446 F.2d 602.

consider its previous decision and dismiss the petition herein.

The Court of Appeals for the Eighth Circuit, in the *North Arkansas Electric* case, reviewed the legislative history of Section 2(3) of the Act, which defines the term "employees" as "any employee" and Section 2(11) which defines "supervisors." The court concluded that although the Board's practice of excluding "managerial" employees from rank-and-file bargaining units was not specifically referred to in that history, the Congress must nevertheless have been aware of the Board's stated policy and the failure of Congress "to change the statute to specifically include managerial employees as 'employees' either in 1947 or in subsequent years must be given some weight by this court." The court then went on to review a number of Board decisions in which managerial employees were excluded from bargaining units and noted specifically the Board's holding in *Swift & Company*, 115 NLRB 752, 753—754, to the effect that:

> It was the clear intent of Congress to exclude from the coverage of the Act all individuals allied with management. Such individuals cannot be deemed to be employees for the purposes of the Act.

In addition, the court referred to several court of appeals decisions which described Board law as excluding, as managerial employees, "those who formulate, determine and effectuate an employer's policies" and approving such Board law as consistent with congressional intent.

The court further rejected this Board's approach in the decision which it was reviewing, which argued for the exclusion from the coverage of the Act of only such managerial employees as "participated in the formation, determination or effectuation of manage-

ment policy *with respect to employee relations matters.*"

With all due respect to the court, we have considerable difficulty with its analysis of the legislative history. It is quite true that the Congress rejected amendments to the definition of "employee" which would have made specific an exclusion of labor relations personnel and confidential employees. The conference report submitted to the Senate deleted these amendments "since the Board had treated, and presumably would continue to treat, such persons as outside the scope of the Act." The rationale underlying the Board's history of excluding such employees rests of course upon the premise that conflicts of interest are likely to arise between the collective employee group represented by a labor organization and personnel working as, with, or for management representatives whose area of responsibility includes bargaining with such a labor organization.

But it is a long leap to reason that because Congress declined to amend the Act to exclude a specific type of managerial personnel it thereby meant *all* managerial personnel, conceivably even those whose only "managerial" functions involve a determination of what sources of supply should be used in making purchases of less than $5,000.

Yet, the Employer here argues, with some force, that the broad language of the court's opinion in *North Arkansas Electric* would indeed indicate that that court believed that the Congress had specifically intended to affirm what is said to be preexisting Board policy with respect to the entire scope and meaning of the term "managerial employees," used in whatever context by this Board.

We do not agree with so broad an interpretation. The Congressional silence with respect to managerial

employees in general, when considered in the specific context of the legislative history, does not, we think, indicate any intent as to Board policy in this broad area, nor does it suggest that the Congress explored any facet of this problem other than the Board's treatment of personnel associated with the formulation and implementation of labor relations policies.

The court was on firmer ground, however, in its review of Board and court decisions which preceded the Board's decision in *North Arkansas Electric.* It cannot be gainsaid that this Board had, prior to *North Arkansas Electric,* stated on a number of occasions its intent to exclude from bargaining units "those who formulate, determine, and effectuate an employer's policies." But the question which faced us in *North Arkansas Electric* and which faces us again here, albeit in a somewhat different setting, is whether there is a basis in the statute or in commonsense for denying statutory protection and representational rights to all employees who have *any* discretion in the formulation, determination, and effectuation of *any* employer policy.

It is clear enough, as the legislative commentary and commentary in several of our own decisions has explained, that there is sound basis for the exclusion of those concerned with management policies in the labor relations area. There, the potential for conflict of interest is apparent and thus an orderly administration of this Act requires the exclusion of such personnel from coverage.

And it may be that other than purely labor relations managerial employees should unquestionably be excluded because of their responsibility with respect to policies which are inextricably intertwined and of necessity affect or impinge upon the labor relations area. For instance, a corporate representative, charged

with the duty of determining where an employer's plants should be located or what capital expenditures a corporation ought to make, may well have such broad managerial discretion as to necessarily involve the determination of matters affecting employment and employment policies that he should be excluded from coverage. It may be that his decisions inevitably will encompass the field of labor relations, even though corporate organization charts may not, on their face, classify him as charged directly with labor relations policymaking.

A like analysis might also dictate the exclusion of those bearing primary responsibility for determination of financial policies, or even those charged with the direction of basic policies in the field of research and development. We make no attempt to list in detail all those managerial types who ought properly to be excluded. Nor did we in *North Arkansas,* where the only relevant consideration was the employee's lack of authority with respect to labor relations matters.

But throughout any attempted analysis must run the common thread of an examination as to whether the duties and responsibilities of any managerial employee or group of managerial employees do or do not include determinations which should be made free of any conflict of interest which could arise if the person involved was a participating member of a labor organization. That is the fundamental touchstone.

If we find, upon the facts of any case, that the probabilities of such conflict are sufficiently minimal, then in the absence of congressional mandate we would see no commonsense reason to deny such persons the opportunity to freely engage in concerted activity and the right to decide for themselves whether or not they wish to be represented in their dealings with their employer by a labor organization.

In our original decision in this case we set forth our reasons for finding that it had not been demonstrated that representation of buyers with limited and specific "policy" responsibility would necessarily create a conflict of interest in the circumstances there present, and we further found that there was a sufficient community of interest among these buyers so that they constituted a separate appropriate unit for collective bargaining. After due consideration of the court opinion in the *North Arkansas Electric* case, we remain of the same view.

Accordingly, the Employer's Motion for Reconsideration is denied.

ORDER

It is hereby ordered that the Motion for Reconsideration herein be, and it hereby is, denied.

Dated, Washington, D.C., May 1, 1972.

[SEAL]

EDWARD B. MILLER,
Chairman,

JOHN H. FANNING,
Member,

HOWARD JENKINS, Jr.,
Member,

RALPH E. KENNEDY,
Member,

National Labor Relations Board.

APPENDIX F

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

Sec. 2. When used in this Act—

* * * * *

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees, of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent

contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

* * * * *

(11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

* * * * *

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

* * * * *

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No. 72-1598

IN THE

Supreme Court of the United States

October Term, 1972

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

BELL AEROSPACE COMPANY DIVISION
OF TEXTRON INC.,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RICHARD E. MOOT, ESQ.,
For OHLIN, DAMON, MOREY,
SAWYER & MOOT,
Attorneys for Respondent,
1800 Liberty Bank Building,
Buffalo, New York 14202.

ERWIN N. GRISWOLD, ESQ.,
Solicitor General,
Department of Justice,
Washington, D. C. 20530.

PETER G. NASH, ESQ.,
General Counsel,
National Labor Relations Board,
Washington, D. C. 20570.

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BATAVIA, N. Y.

INDEX.

PAGE

POINT I. The petition fails to establish any of the grounds for granting certiorari set forth in Rule 19 and should be dismissed 1

POINT II. The record amply establishes a sound basis for denying certiorari 5

Conclusion 9

TABLE OF CASES.

SUPREME COURT:

Magnum Co. v. Coty, 262 US 159, 163 (1923)..... 1
N. L. R. B. v. Wyman-Gordon Co., 394 US 759 (1969).. 3, 4
Security and Exchange Commission v. Chenery Corp., 332 US 194 (1946) 3, 4
Thompson v. City of Louisville, 362 US 199 (1960) 3
United States v. Johnson, 268 US 220, 227 (1925)..... 3

CIRCUIT COURTS:

Bell Aerospace Company Division of Textron Inc. v. N. L. R. B., 475 F. 2d 485 (CA2, 1973) 5
N. L. R. B. v. North Arkansas Electric Cooperative, Inc., 446 F. 2d 602 (CA8, 1971) 5

N. L. R. B. DECISIONS:

American Locomotive Company, 92 N. L. R. B. No. 22 (1950) 6
Denton's Inc., 83 N. L. R. B. No. 3 (1949) 7
Federal Telecommunication Laboratories, Inc., 92 N. L. R. B. No. 206 (1951) 7
Federal Telephone and Radio Company, 120 N. L. R. B. No. 207 (1958) 7
Girdler Company, 115 N. L. R. B. No. 109 (1956)..... 7

PAGE

Interstate Company, 125 N. L. R. B. No. 11 (1959) 7
Mack Trucks, Inc., 116 N. L. R. B. No. 222 (1956) 7
Plankinton Packaging Co., 116 N. L. R. B. No. 160 (1956) 7
Sunnyland Packing Co., 113 N. L. R. B. No. 12 (1955) .. 7
Swift & Co., 115 N. L. R. B. No. 105 (1956) 6
Temco Aircraft Corp., 121 N. L. R. B. No. 145 (1958) .. 7
W. W. Chambers Company, 124 N. L. R. B. No. 135 (1959) 7
Western Gear Corporation, 160 N. L. R. B. No. 25 (1966) 7
Wm. P. McDonald Corp., 83 N. L. R. B. No. 66 (1949) .. 7

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POINT I

The petition fails to establish any of the grounds for granting certiorari set forth in Rule 19 and should be dismissed.

The petition fails to meet the test of Rule 19—review of cases by way of certiorari is not granted merely to give the defeated party in the Court of Appeals another hearing. *Magnum Co. v. Coty,* 262 US 159, 163 (1923). It is apparent from the statement of questions presented

that petitioner, having lost below, simply seeks another bite of the apple in an attempt to correct the alleged error of the Court of Appeals. Fairly paraphrased, the questions presented by petition are:

> 1. Did the Board properly determine that "Managerial employees are covered by the National Labor Relations Act?"
>
> 2. Did the Court of Appeals improperly require the Board to conduct rule making? (petition, p. 2)

In attempting to state the reasons for granting the writ, the petition makes even more clear the inappropriateness of the application. Given as reasons for granting the writ are:

> 1. The holding of the Court of Appeals is erroneous. (petition, p. 8)
>
> 2. The Board correctly held that Congress did not intend to exclude managerial employees from coverage under the Act. (petition, p. 14)
>
> 3. The Court further erred in requiring the Board to proceed through rule making rather than on an adjudicatory basis to determine coverage of the Act. (petition, p. 16)

Neither petitioner's claim of these alleged errors of the Court of Appeals nor the Board's view of the correctness of its own decision are proper reasons for granting certiorari. Furthermore, it is not unreasonable that the Board resort to rule making rather than *ad hoc* decision before overturning long established precedents in so important an area.

Lacking valid argument for certiorari, the petition is largely given over to a lengthy reargument of the facts and law of the case in an attempt to persuade this Court of the merits of petitioner's position. Even if petitioner's

analysis of the facts were not strongly slanted in its own favor,[1] certiorari is not granted to review the evidence and discuss the facts. *United States v. Johnson*, 268 US 220, 227 (1925). Where factual issues have been considered upon certiorari by this Court, it is where the decision below appears so shockingly wrong as to present serious substantial questions of due process. *Thompson v. City of Louisville*, 362 US 199 (1960). The petition does not even attempt such a factual showing in the present case. This effort by the Board to again argue the merits of its position does not form a proper basis for granting the petition.

The petition also fails to establish that the Court of Appeals has decided the question in a way which conflicts with the decisions of this Court or has so far departed from the accepted and usual course of judicial proceedings as to require the intervention of this Court.

Petitioner's attempt to reach this basis for granting the writ is based on *Security and Exchange Commission v. Chenery Corp.*, 332 US 194 (1946), and *N. L. R. B. v. Wyman-Gordon Co.*, 394 US 759 (1969). It contends that the Second Circuit erred in directing rule making. Both cases are clearly distinguishable.

Chenery Corp. was, as this Court was careful to point out, a case of first impression where ". . . the Commission which had not previously been confronted with the

[1] Reference to the purchase of fuel oil, light bulbs, packaging supplies and paper by the buyers, when in fact 70% of Bell's business is production of sophisticated missile and weaponry requiring the buyers to act as chief of the combined management team for the purchase of special items according to detailed specifications and blueprints and the failure to mention one of the buyers within the group committed $1,351,983 in a 19 month period, illustrate petitioner's attempt to slant and argue factual issues which have no place in a proper petition for certiorari. Compare petitioner's statement of the facts (petition, pp. 3-4) with the impartial statement of the Court (petition, pp. 22-23).

problem of management trading during reorganization was (not) forbidden from utilizing this particular proceeding for announcing and applying a new standard of conduct." (p. 203) The petition here presents not a case of first impression but a case where both the Eighth and Second Circuits have concurred in following a long line of similar decisions by the Board itself.

Where a clear precedent has been established, the general rule of *Chenery Corp.* that new law should be made prospectively through the exercise of rule making powers, should apply rather than the exception to the general rule which petitioner seeks to invoke. As *Chenery Corp.* points out, the case-by-case adjudication exception should be reserved for cases of first impression and problems not previously confronted by the administrative agency.

To unravel case-by-case a rule carefully woven as to who is and who is not a managerial employee would produce utter confusion. After 37 years of court and Board decisions under the Labor Management Relations Act, the threshold question of who is "management" and who is "labor" would be examined *de novo* under the "labor sensitive" criteria now urged by the Board to upset the decisions of the Eighth and Second Circuits. (See Point II, *infra.*)

In *Wyman-Gordon Co.*, four Justices held that a specific order of the Board requiring an employer to disclose a list of its employees in a representation case was enforceable, though an earlier attempt to reach the same result by a procedurally defective rule-making process was invalid. Three Justices thought that the defective rule-making procedure was nevertheless a valid adjudication. This case does not help petitioner here. The general impact of both cases supports the rule making approach adopted by Chief Judge Friendly below.

POINT II

The record amply establishes a sound basis for denying certiorari.

The decision of both Circuit Courts which have squarely considered the question of coverage under the Labor Management Relations Act for managerial employees are in agreement, not conflict. *Bell Aerospace Company Division of Textron Inc. v. N. L. R. B.*, 475 F. 2d 485 (CA2, 1973); *N. L. R. B. v. North Arkansas Electric Cooperative, Inc.*, 446 F. 2d 602 (CA8, 1971). This concededly important Federal question of coverage under the Act has been considered in numerous and well settled Board and Court decisions over the 37 year history of this legislation and has culminated in the concurrence of both the Eighth and Second Circuits.

The Board simply disagrees and would unsettle this long line of cases in order to establish its new "conflict of interest" or "labor sensitive" touchstone as a basis for jurisdiction under the Act.[2] The claim, page 18 of the petition, that this touchstone of coverage is not novel, is simply not so. It is directly contrary to the position taken by the Board itself on its brief to the Second Circuit where, with a candor now lacking, the Board stated:

> "While the Board's decision in *North Arkansas* and in the instant case, marked a change in Board policy, it is well settled that the Board may change its policy 'if in so doing, it (does) not act arbitrarly or in violation of the Act.' "

[2] The Eighth Circuit emphatically rejected this test. The idea that "management" under the Act is limited to "labor sensitive" positions suggests that management will now bargain with management—labor sensitive on one side of the table and management—non-labor sensitive on the other—certainly a new concept in labor-management relations.

Having failed to persuade the Second Circuit that it was entitled *sua sponte* to change its policy with respect to coverage under the Act, the Board now attempts by this petition to claim that the argued for interpretation of coverage under the Act is "not novel." Petitioner's suggestion that its decision in *Swift & Co.*, 115 NLRB No. 105 (1956), is " an aberration" (petition, p. 18) is not true.[3] In *American Locomotive Company*, 92 NLRB No. 22 (1950), the Board also squarely rejected the Union's contention that buyers be placed in a separate unit. The Board, at pp. 117-118, stated:

> "As it appears that the buyers are authorized to make substantial purchases for the Employer, we find that they are representatives of management, and as such may not be accorded bargaining rights under the Act."

Furthermore, the Board's decisions in *Swift & Co.* and *American Locomotive Co.* are not "single sweeping and inaccurate statement[s]" (petition, p. 15). To the contrary, they accurately reflect and are perfectly consistent with the rationale of the Board's numerous decisions excluding buyers from proposed units of other employees. Irrespective of the Board's present assertions, buyers were excluded

---

[3] The Board in *Swift & Co.* held that procurement drivers, who made purchases for the employer's account, could not be included in a production and maintenance unit and would not constitute an appropriate separate unit. The Board stated:

> "It was the clear intent of Congress to exclude from the coverage of the Act all individuals allied with management. Such individuals cannot be deemed to be employees for the purposes of the Act. Accordingly, we reaffirm the Board's position that representatives of management may not be accorded bargaining rights under the Act, and deny the petitioners' alternate request."

because they are part of management,[4] not because they lacked community of interest with other employees sought to be included in the proposed units.[5]

---

[4] See, for example, *Interstate Company*, 125 NLRB No. 11 (1959) ("In accordance with customary Board policy, we will exclude these employees as managerial employees because of their buying function."); *W. W. Chambers Company*, 124 NLRB No. 135 (1959) ("The buyer spends about 60% of her time in buying supplies for the employer . . . By virtue of her purchasing activities . . . this employee effectively exercises a prerogative of, and is a representative of management. We therefore find that the interests of the buyer are allied with those of management. Accordingly, we shall exclude her . . ."); *Temco Aircraft Corp.*, 121 NLRB No. 145 (1958) ("Buyer A: This employee purchases materials for the company and is often required to pledge the company's credit. We find that Buyer A is managerial, and exclude him from the unit."); *Federal Telephone and Radio Company*, 120 NLRB No. 207 (1958) (". . . we find that buyers . . . exercise a prerogative of management . . . that their interests are allied with management and exclude them . . ."); *Mack Trucks, Inc.*, 116 NLRB No. 222 (1956) ("We find that the buyers and assistant buyers are managerial employees and shall exclude them."); *Plankinton Packaging Co.*, 116 NLRB No. 160 (1956) (". . . [he] (employee who made purchases for employer's account) exercises a prerogative of, and [is a] representative of management . . . [his] interests are allied with management and [we] exclude [him] from the appropriate units."); *Girdler Company*, 115 NLRB No. 109 (1956) ("We find . . . that the buyers are managerial employees whom we shall exclude . . ."); *Sunnyland Packing Co.*, 113 NLRB No. 12 (1955) (". . . the interests of both these employees [beef buyers] are clearly associated with management. We shall, in accord with our usual practice, exclude them . . ."); *Federal Telecommunication Laboratories, Inc.*, 92 NLRB No. 206 (1951) (". . . in accordance with our established policy, [we shall] exclude them from the unit as managerial employees who have the authority to pledge the company's credit in making purchases."); *Wm. P. McDonald Corp.*, 83 NLRB No. 66 (1949) (". . . his interests are closely connected with those of management. Accordingly, we shall exclude the fruit buyer . . ."); *Denton's Inc.*, 83 NLRB No. 3 (1949) (". . . the interests of the buyers . . . are more closely identified with management than with the other employees . . . in accordance with our policy . . . we shall exclude all buyers . . .").

[5] When the Board wishes to exclude an individual from a proposed unit due to a lack of community of interest, it specifically says so. In *Western Gear Corporation*, 160 NLRB No. 25 (1966), the Board

(Footnote continued on following page)

Contrary to the very purpose of Supreme Court review, the argument advanced by the Board upon this petition would, by upsetting a long line of cases, create a state of confusion with respect to coverage under the Act in this important area of labor-management relations. The Board and the courts will then have to fashion anew the distinction between covered and non-covered employees—a distinction which already has been carefully, consistently and painstakingly established over a 37 year period.

(Footnote continued from preceding page)
excluded buyers and buyers follow-up because of their "exercise of managerial responsibility" and then excluded an outside buyer follow-up, who did not pledge the employer's credit, because he lacked a community of interest with others in the proposed unit. If all were excluded because they lacked a community of interest why would the Board assign different reasons in excluding these employees? The reason, of course, is that buyers are not excluded because they lack a community of interest, but because, as managerial employees, they are not considered to be covered by the Act.

Conclusion

Petition incorrectly urges error of the Court below as a basis for granting certiorari and improperly seeks to review the concurring decisions of the Eighth and Second Circuits on the well-established question of coverage under the Labor Management Relations Act. Under the sound considerations established by this Court, the petition should be denied and the long line of cases delineating coverage of "managerial employees" under the Labor Management Relations Act should be left undisturbed.

Respectfully submitted,

OHLIN, DAMON, MOREY, SAWYER
& MOOT,
1800 Liberty Bank Building,
Buffalo, New York 14202,

Counsel for Respondent Bell Aerospace Company Division of Textron Inc.

MASON O. DAMON, ESQ.,
RICHARD E. MOOT, ESQ.,
JAMES N. SCHMIT, ESQ.,
Of Counsel.

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In the Supreme Court of the United States

OCTOBER TERM, 1973

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

BELL AEROSPACE COMPANY DIVISION OF TEXTRON, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

PETER G. NASH,
General Counsel,
JOHN S. IRVING,
Deputy General Counsel,
PATRICK HARDIN,
Associate General Counsel,
NORTON J. COME,
Deputy Associate General Counsel,
LINDA SHER,
Attorney,
National Labor Relations Board,
Washington, D.C. 20570.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Statutes involved	2
Questions presented	2
Statement	2
A. The Board proceedings	2
B. The decision of the Court of Appeals	7
Summary of argument	9
Argument	12
I. Managerial employees are covered by the National Labor Relations Act unless their duties are likely to cause a conflict of interest between their job responsibilities and their responsibilities to a labor organization	12
A. The Board and court decisions prior to 1947	12
B. The 1947 amendments to the Act	17
C. The Board's conclusion that managerial employees are excluded from the coverage of the Act only where there is likelihood of a "conflict of interest" is consistent with the 1947 amendments	23
D. The Board was warranted in finding that the buyers here were not the kind of managerial employees who were excluded from the coverage of the Act	28

527-175—73——1

Argument—Continued Page
II. The Board was not required to conduct a rule-making rather than an adjudicatory proceeding to determine whether respondent's buyers are employees covered by the Act 29
Conclusion 33

CITATIONS

Cases:

Amalgamated Meat Cutters v. *National Labor Relations Board*, 237 F. 2d 20, certiorari denied, 352 U.S. 1015 28
American Can Co., 55 NLRB 530 15
Atlantic Greyhound Corp., 7 NLRB 1189 13–14
Babcock & Wilcox Co., 52 NLRB 900 15
Barrett Division, Allied Chemical & Dye Corp., 65 NLRB 903 14
Dravo Corp., 54 NLRB 1174 14
Eastern Camera and Photo Corp., 140 NLRB 569 13
Electric Controller & Mfg. Co., 69 NLRB 1242 14
Electric-Auto Lite Co., 57 NLRB 723 15
Excelsior, 156 NLRB 1236 31
Ford Motor Co., 66 NLRB 1317 ..... 13, 16, 26
Friez & Sons, 47 NLRB 43 14
General Telephone Co. of Ohio, 112 NLRB 1225 13
Godchaux Sugars, Inc., 44 NLRB 874 16
Hudson Motor Car Co., 55 NLRB 509 14
Hunt & Mottet Co., 206 NLRB No. 85 13
Illinois State Journal-Register v. *National Labor Relations Board*, 412 F. 2d 37 ..... 8, 9, 13
Int'l Ladies' Garment Workers' Union v. *National Labor Relations Board*, 339 F. 2d 116 13
Local 761, Int'l Union of Electrical Workers v. *National Labor Relations Board*, 366 U.S. 667 28

Cases—Continued

	Page
Maryland Drydock Co., 49 NLRB 733	16, 17
Mueller Brass Co., 39 NLRB 167	16
Murray Ohio Mfg. Co., 61 NLRB 47	15
National Labor Relations Board v. *North Arkansas Electric Cooperative, Inc.*, 446 F. 2d 602	6
National Labor Relations Board v. *Skinner & Kennedy Stationery Co.*, 113 F. 2d 667	14
National Labor Relations Board v. *Wheeling Electric Co.*, 444 F. 2d 783	8
National Labor Relations Board v. *Wyman-Gordon Co.*, 394 U.S. 759	12, 30, 31, 33
North Arkansas Electric Co-op, 185 NLRB 550	5, 6, 28
Packard Motor Car Co. v. *National Labor Relations Board*, 330 U.S. 485	10, 11, 16, 17, 20, 24, 25, 28
Palace Laundry Dry Cleaning Corp., 75 NLRB 320	27
Retail Clerks Int'l Ass'n v. *National Labor Relations Board*, 366 F. 2d 642	13
Saco-Lowell Shops, 61 NLRB 898	15
Securities & Exchange Commission v. *Chenery Corp.*, 332 U.S. 194	12, 30
Soss Mfg. Co., 56 NLRB 348	14, 16
Southern Colorado Power Co., 13 NLRB 699	14
Spicer Mfg. Corp., 55 NLRB 1491	13
Swift & Co., 115 NLRB 752	13, 26, 27, 28, 32
Union Collieries Coal Co., 41 NLRB 961	17
Vulcan Corp., 58 NLRB 733	13, 14
Walter Kidde and Co., Inc., 64 NLRB 1050	15
Westinghouse Electric Corp. v. *National Labor Relations Board*, 398 F. 2d 669	24, 27
Wise, Smith & Company, Inc., 83 NLRB 1019	27

Statutes: Page

Administrative Procedure Act, Section 4 (5 USC § 553) 9

National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*)

Section 2(3) 12, 17

Section 2(11) 14

Section 8(a)(1) 7, 8

Section 8(a)(5) 7, 8

Miscellaneous:

92 Cong. Rec. 6677 21

93 Cong. Rec. 4136 21

93 Cong. Rec. 4677–4678 19

H. Conf. Rep. No. 510, 80th Cong., 1st Sess. 22

H. Rep. No. 245, 80th Cong., 1st Sess. 18, 19

Section 2(12) of H.R. 3020, 80th Cong., 1st Sess. 18

Section 2(11) of S. 1126, 80th Cong., 1st Sess. 19

S. Rep. No. 105, 80th Cong., 1st Sess. 20, 22

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A, pp. 21–45) [1] is reported at 475 F. 2d 485. The Board's decision and order (Pet. App. C, pp. 47–59) are reported at 197 NLRB No. 30. The Board's decision in the underlying representation case (Pet. App. D, pp. 60–68) is reported at 190 NLRB 431; its order denying reconsideration in that proceeding (Pet. App. E, pp. 69–75) is reported at 196 NLRB No. 127.

[1] "Pet. App." refers to the appendix to the petition. "A." refers to the separate appendix to the briefs.

JURISDICTION

The judgment of the court of appeals (Pet. App. B, p. 46) was entered on February 28, 1973. The petition for a writ of certiorari was filed on May 29, 1973, and was granted on October 9, 1973 (A 299). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTES INVOLVED

The relevant statutory provisions are set forth in the Appendix, *infra*, pp. 35–38.

QUESTIONS PRESENTED

1. Whether the Board properly determined that "managerial employees" are covered by the National Labor Relations Act unless their duties are likely to cause a conflict of interest between their job responsibilities and their responsibilities to a labor organization.

2. Whether the court of appeals improperly required the Board to conduct rule-making rather than adjudicatory proceedings to determine whether certain employees are covered by the Act.

STATEMENT

A. THE BOARD PROCEEDINGS

On July 30, 1970, the Union [2] filed a representation petition with the Board, seeking certification as the bargaining representative of the 25 buyers in the Purchasing & Procurement Department of the Company's

[2] International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Amalgamated Local 1286.

Wheatfield, New York plant, which manufactures and sells rocket engines and electronic equipment (A. 7). The Company opposed the petition on the grounds that the buyers were managerial employees and thus excluded from coverage of the Act (A. 8, 86–87).

At the representation hearing, the following facts were established:

The Purchasing & Procurement Department fills orders from 30 other departments (A. 26). This involves purchasing all of the Company's needs, including maintenance and repair items such as fuel oil and light bulbs, support items such as packaging and paper, and production items ranging from simple nuts and bolts to sophisticated components for the equipment the Company manufactures (A. 26, 35–38, 41). Many purchases are "off the shelf" items, which can be obtained from a number of sources. Other items must be made up according to the Company's specific needs (A. 26, 35–36).

The buyers in this Department work under a Procurement Director, an Assistant Procurement Director, two purchasing agents, and four supervisors for particular categories of purchases (A. 50, 198). There are no educational or formal training requirements for the buyers, who are guided in their work by a detailed procurement manual (A. 49–50, 64–65, 80–82, 146–148, 201–206, 209, 211–212, 234). The buyers, whose salaries range from $195 to $271 weekly, are not paid for casual overtime, but are compensated for scheduled overtime which has been authorized by a supervisor (A. 46–47,

150–151). Although not paid an hourly rate, the buyers must receive supervisory permission to take a long lunch period or to leave the plant early (A. 152–153).

Purchase orders are initiated by requisitions from the various departments. These go first to the Finance Department for approval and are then sent to the Procurement Department, where they are assigned to a supervisor who in turn assigns them to a particular buyer (A. 58–60, 208). Requisitions for items which have been ordered previously generally specify a particular vendor; indeed, requisitions for some frequently-ordered items are computerized (A. 60, 123–124, 262). Where no vendor has been designated on the requisition, the buyer is free to select one (A. 59, 134–137). Where the requisition is for material which must be made to the Company's specification, it is accompanied by detailed blueprints and other technical plans (A. 100–101, 105–106). When obtaining sophisticated production items—such as material for the Minute Man missile project, which represents 70 percent of the Company's sales—purchasing decisions are made by a team of supervisory personnel from the engineering, quality assurance, finance, and manufacturing departments (A. 78–82).

Buyers may place or cancel orders of less than $5,000 on their own signature. Larger orders require supervisory approval, with higher levels of approval required as the cost rises (A. 30–32, 163, 201–206). On orders of more than $5,000, the buyer is required to conduct "prenegotiations" with supervisory personnel in the department and to obtain their "complete con-

currence" before initiating a contact with a potential vendor (A. 32, 79, 206, 231). Buyers must secure supervisory approval for changes in procurement (A. 181, 213, 215, 218).

The Board, following its decision in *North Arkansas Electric Cooperative, Inc.*, 185 NLRB 550, where it had held "'managerial' employees to be employees within the meaning of the Act and entitled to its protection," concluded that, "even though, as the Employer argues, the buyers may be 'managerial' employees, * * * as employees they are entitled to be represented under the Act, unless there is some cogent reason for denying such representation" (Pet. App. D, p. 61).

The Board found no such "cogent reason" here, rejecting as "unsupported conjecture" the Company's claim that the buyers' authority to commit the Company's credit, to select suppliers, and to influence "'make or buy' decisions" created "a potential conflict of interest between the buyers as union members and the Employer" (Pet. App. D, pp. 62–63). The Board stated that, "While it is true that the buyers are in a position to commit the Employer's credit, the record reveals that the discretion and latitude for independent action must take place within the confines of the general directions which the Employer has established. * * * the buyers cannot commit the Employer's credit for amounts above $5,000 without the concurrence of higher authority" (Pet. App. D, pp. 62–63).[3]

[3] In the paragraph of the Board's decision reprinted at the bottom of Pet. App. 62, a line, which we have italicized below, was inadvertently omitted. The sentence beginning "Thus policy

The Board also found no "merit in the Employer's contention that any hiring and discharge restrictions likely to follow certification will affect its ability to deal with the employees." For, "[t]he Employer would still retain the power to discipline or discharge employees for improper performance of duty, subject only to such limitations as he might agree to during negotiations" (Pet. App. D, p. 63).

Accordingly, the Board held that the Company's buyers were entitled to representation rights under the Act, and, finding that a unit of buyers was appropriate for collective bargaining purposes, it directed an election in that unit (Pet. App. D, pp. 64–66). The Union won the election by a vote of 15 to 9, and was certified by the Board as the buyers' bargaining representative (Pet. App. D, pp. 66–68).

The Company moved the Board for reconsideration, noting that the Eighth Circuit had recently denied enforcement of the Board's order in *North Arkansas Electric, supra.*[4] The Board denied reconsideration (Pet. App. E, pp. 69–75), stating that it disagreed with the holding of the Eighth Circuit that Congress, in 1947, had manifested an intent to exclude all managerial personnel from the coverage of the Act. In

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guides" should read as follows: "Thus policy guides for 'make or buy' decisions can clearly be established and enforced, so that any possible temptation to allow sympathy for sister unions to influence such decisions could effectively be controlled *by the employer. Additionally, the record reveals that* the buyers cannot commit the Employer's credit for amounts above $5,000 without the concurrence of higher authority."

[4] *National Labor Relations Board* v. *North Arkansas Electric Cooperative, Inc.*, 446 F. 2d 602.

the Board's view, Congress intended only to preserve the Board's practice of excluding "personnel associated with the formulation and implementation of labor relations policies," which the buyers clearly were not. (Pet. App. E, pp. 72–73.) The Board concluded that, in determining whether employees who have discretion in the formulation, determination, and effectuation of other employer policies are excluded from the Act, "the fundamental touchstone" is whether their duties and responsibilities "do or do not include determinations which should be made free of any conflict of interest which could arise if the person involved was a participating member of a labor organization" (Pet. App. E, p. 74). Applying that criterion, the Board affirmed its earlier findings that union representation of the Company's buyers would not tend to create a conflict of interest, and that there was a sufficient community of interest among these buyers so that they constituted a separate appropriate unit for collective bargaining (Pet. App. E, p. 75).

The Company refused to bargain with the Union, an unfair labor practice complaint issued, and the Board found that the Company had violated Section 8(a)(5) and (1) of the Act. The Board ordered the Company to bargain with the Union. (Pet. App. C, pp. 47–59.)

B. THE DECISION OF THE COURT OF APPEALS

The court of appeals concluded that all true managerial employees are excluded from the coverage of

the Act.[5] The Court reasoned as follows (Pet. App. A, pp. 38–39):

> The 1947 Congress clearly believed that at least some "managerial employees" other than "supervisors" were excluded from the protections of the Act. [Footnote omitted.] In 1956 the Board concluded that the Congress had meant to exclude all true "managerial employees." This exclusion embraced not only an employee "so closely related to or aligned with management as to place the employee in a position of conflict of interest between his employer on the one hand and his fellow workers on the other" but also one who is "formulating, determining and effectuating his employer's policies or has discretion, independent of an employer's established policy, in the performance of his duties," *Illinois State Journal-Register, Inc.* v. *NLRB*, 412 F. 2d 37, 41 (7 Cir. 1969). Both because of what we believe to have been the understanding of the 1947 Congress and because the Board's interpretation of it had been so clearly defined for the 1959 Congress, the Board is not now free to decide the contrary * * *.

The court added, however, that "the Board would [not] be precluded, on proper proceedings, from determining that buyers, or some types of buyers, are not true 'managerial employees' and consequently come within the protection of § 8(a)(5) and (1)" (Pet. App. A, p. 39). It ruled that there was "substantial

[5] As noted (n.4, *supra*), the same conclusion was reached by the Eighth Circuit in *National Labor Relations Board* v. *North Arkansas Electric Cooperative, Inc.*, *supra*. See also *National Labor Relations Board* v. *Wheeling Electric Co.*, 444 F. 2d 783 (C.A. 4).

evidence that Bell's buyers were not sufficiently high in the hierarchy to constitute 'managerial employees' as that term has been defined" in *Illinois State Journal-Register, supra* (Pet. App. A, p. 39). Nevertheless, the court denied enforcement of the Board's order for two reasons.

First, "we cannot be sure that the Board's decision rested on such a factual determination rather than on its new and, in our view, erroneous holding that it was free to regard *all* managerial employees as covered by the Act unless their duties met" the conflict of interest touchstone (Pet. App. A, p. 40). Second, "while the Board was not precluded from reversing itself on the position that buyers, or some buyers, were not 'managerial employees,' we hold that, particularly in light of the justified contrary belief the Board had engendered, it could not do this in the manner that was done here"; rather, it should have conducted a rule-making proceeding in conformity with Section 4 of the Administrative Procedure Act, 5 U.S.C. 553 (Pet. App. A, pp. 40–41). The court remanded the case to the Board to conduct a rule-making proceeding (Pet. App. A, pp. 43–45).

SUMMARY OF ARGUMENT

I

Under the Wagner Act, the Board held that both "managerial" and "supervisory" employees were included within the Act's broad definition of "employee," and thus covered by the Act. The Board, however, excluded managerial and supervisory employees

from bargaining units of other employees on the ground that they lacked a sufficient community of interest with these employees, or they had a confidential relationship with the employer in matters concerning labor relations. In *Packard Motor Car Co.* v. *National Labor Relations Board,* 330 U.S.C. 485, this Court sustained the Board's determination that foremen were protected by the Act, and that a unit limited to foremen was appropriate for collective bargaining.

In the 1947 amendments to the Act, Congress overturned the *Packard* ruling by specifically excluding *supervisory employees* from the coverage of the Act. But it narrowly defined "supervisor" so as to encompass only those who were vested with genuine authority to direct or affect the employees' working conditions. Moreover, although the legislative history of the amendment shows that Congress intended to exclude from coverage one class of managerial employees—*i.e.,* "persons working in the labor relations, personnel and employment departments"—because their unionization would create a conflict of interest with their employment duties, it did not otherwise alter the Board's preexisting practice with repect to managerial employees.

In light of this legislative history, the Board correctly concluded that Congress did not intend to exclude all managerial employees from the coverage of the Act. Rather, Congress left it to the Board to determine which managerial employees should be excluded on the basis of whether such a conflict of interest was likely to result.

Contrary to the conclusion of the court below, the Board's position gives full effect to the view of the dissenting Justices in *Packard, supra,* which prompted Congress to exclude supervisors from the coverage of the Act. The dissenters believed that the Act should be construed as putting "in the employer category all those who acted for management not only in formulating but also in executing its labor policies" (330 U.S. at 496). The Board's conflict of interest test would exclude from the coverage of the Act managerial employees who were so involved with labor policies.

The buyers here have no responsibilities in the personnel or labor relations fields. The Board correctly found, upon examination of their duties and responsibilities, that their discretion to choose vendors or influence "make or buy" decisions was or could be sufficiently limited "so that any possible temptation to allow sympathy for sister unions to influence such decisions could effectively be controlled by the Employer" (Pet. App. D, p. 62). Accordingly, the Board properly found them not to be the kind of managerial employees who were excluded from the coverage of the Act.

II

Even if the court below were correct in holding that "all true managerial employees" are excluded from the Act, it erred in holding that the Board could determine whether the buyers here are "true managerial employees" only through a rule-making proceeding. "The choice made between proceeding by general rule or by individual, *ad hoc* litigation is one that lies

primarily in the informed discretion of the administrative agency." *Securities & Exchange Commission* v. *Chenery Corp.*, 332 U.S. 194, 203.

The Board acted within its discretion in determining in an adjudicatory proceeding whether the duties of the Company's buyers presented the possibility of a conflict of interest. Contrary to the view of the court below, the Board was not enunciating a novel principle, but was merely applying an established principle to a particular group of employees. Moreover, there are hundreds of thousands of buyers employed in American industry, and their duties vary from industry to industry, within any given industry, and even within a particular company. In these circumstances, a rule-making proceeding is likely to produce only broad general standards which would be of little value until they were subsequently applied to particular fact situations. Nothing in *National Labor Relations Board* v. *Wyman-Gordon Co.*, 394 U.S. 759, requires a rule-making proceeding here.

ARGUMENT

I. MANAGERIAL EMPLOYEES ARE COVERED BY THE NATIONAL LABOR RELATIONS ACT UNLESS THEIR DUTIES ARE LIKELY TO CAUSE A CONFLICT OF INTEREST BETWEEN THEIR JOB RESPONSIBILITIES AND THEIR RESPONSIBILITIES TO A LABOR ORGANIZATION

A. THE BOARD AND COURT DECISIONS PRIOR TO 1947

Section 2(3) of the Wagner Act provided that "The term 'employee' shall include any employee * * * but shall not include any individual employed as an agricultural laborer, or in the domestic service of any

family or person at his home, or any individual employed by his parent or spouse * * *." The Board early ruled that the statutory definition is of wide comprehension, and that it covered "managerial" and "supervisory" employees.[6] *Atlantic Greyhound Corp.*,

[6] Managerial employees are ordinarily defined as "employees who are in a position to formulate, determine and effectuate management policies. These employees * * * express and make operative the decisions of management." *Ford Motor Co.*, 66 NLRB 1317, 1322. They are not necessarily concerned with labor relations. For examples of the types of employees whom the Board has considered to be managerial, see *Spicer Mfg. Corp.*, 55 NLRB 1491, 1498 (expediters who placed and reassigned orders to expedite tool delivery); *Vulcan Corp.*, 58 NLRB 733, 736, and *Swift & Co.*, 115 NLRB 752, 753 (buyers who spent a substantial part of their time making purchases for the employer's account); *General Telephone Co. of Ohio*, 112 NLRB 1225, 1229 (local commercial representatives who dealt with the public, including handling their complaints); *Hunt & Mottet Company*, 206 NLRB No. 85, 84 LRRM 1243 (buyers vested with "substantial degree of discretion in their decisions and * * * able to pledge large amounts of employer's credit"). For examples of employees held not to be managerial, see *Eastern Camera and Photo Corp.*, 140 NLRB 569, 571 (manager of one-employee store with limited discretion to set prices); *Illinois State Journal-Register, Inc.* v. *National Labor Relations Board*, *supra*, 412 F. 2d at 41–43 (C.A. 7) (managers of newspaper delivery service with limited authority with respect to management policy); *Retail Clerks Int'l Ass'n* v. *National Labor Relations Board*, 366 F. 2d 642, 644–645 (C.A.D.C.), certiorari denied, 386 U.S. 1017, and *Int'l Ladies' Garment Workers' Union* v. *National Labor Relations Board*, 339 F. 2d 116, 123 (C.A. 2) (union representatives whose exercise of discretion was limited by established policy).

In addition, the class of managerial employees includes persons, sometimes referred to as "confidential" employees, who, though not engaged in formulating and effectuating the employer's policies, work as, or for, management representatives in the area of labor relations (see, *infra*, pp. 14–16).

Supervisory employees, on the other hand, are generally considered, and are now defined by the Act, as employees who have

7 NLRB 1189, 1196; *Southern Colorado Power Co.*, 13 NLRB 699, 719, enforced, 111 F. 2d 539 (C.A. 10); *Dravo Corp.*, 54 NLRB 1174, 1177; *Soss Mfg. Co.*, 56 NLRB 348, 353–354. See also *National Labor Relations Board* v. *Skinner & Kennedy Stationery Co.*, 113 F. 2d 667, 671 (C.A. 8).

The Board also held, however, that managerial employees could not be included in bargaining units of rank-and-file employees. Thus, in *Vulcan Corp., supra*, 58 NLRB at 736, a buyer who spent 75 percent of his time away from the plant was excluded from a production and maintenance unit "[b]ecause of the responsibility of his position and his peculiar relationship to management, and * * * the fact that his interests are apparently different from those of the production and maintenance employees * * *." In *Hudson Motor Car Co.*, 55 NLRB 509, 512, the Board excluded from a clerical unit buyers who "purchase all materials required by the Company," because "their duties are closely allied to management, differing materially from those of the other clerical employees." See also *Friez & Sons*, 47 NLRB 43, 47; *Electric Controller & Mfg. Co.*, 69 NLRB 1242, 1245–1246; *Barrett Division, Allied Chemical & Dye Corp.*, 65 NLRB 903, 905.

Similarly, the Board excluded from bargaining units of other employees persons who were managerial

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authority "to hire, transfer, suspend, * * * or discipline other employees * * *." See Section 2(11) of the Act, reprinted at Pet. App. 77.

in the sense that they had access to confidential information concerning, or acted for management in, labor relations matters. Thus, in *Murray Ohio Mfg. Co.*, 61 NLRB 47, 57, the Board excluded from a broader bargaining unit time-study men who "set wage rates and participate in bargaining conferences * * * [because] * * * they are managerial employees bearing a confidential relationship to the Company in matters concerning labor relations"; at the same time, it refused to exclude the employees of the Design Drafting Department because, although they "have access to information important to the Company from a business point of view, there is nothing to indicate that they have confidential knowledge concerning labor relations * * *." In *The Babcock & Wilcox Co.*, 52 NLRB 900, 903, the Board excluded from bargaining units of other employees "employees of the personnel department [who] necessarily are conversant with information concerning labor relations," and "secretaries to executives, since it appears that their stenographic duties entail working on correspondence which at times concerns labor relations"; but, the Board included accounting department employees, for, although "their work has its confidential aspects, it is not concerned with labor relations." See also *American Can Co.*, 55 NLRB 530, 532–533; *Electric Auto Lite Co.*, 57 NLRB 723, 725–726; *Saco-Lowell Shops*, 61 NLRB 898, 899–900; *Walter Kidde and Co., Inc.*, 64 NLRB 1050, 1052–1053. None of these exclu-

sions meant that such employees were not covered by the Act, but simply that it was not appropriate to include them in a bargaining unit with other employees.[1]

The Board also generally excluded supervisory employees from units of rank-and-file employees. See *Mueller Brass Co.*, 39 NLRB 167, 171; *Godchaux Sugars, Inc.*, 44 NLRB 874, 878. For a time, it held that even a separate unit of supervisory personnel would not be appropriate for collective bargaining. *Maryland Drydock Co.*, 49 NLRB 733. It nonetheless regarded supervisors as employees under the Act and protected thereby against discharge for engaging in union activity. *Soss Mfg. Co., supra.* In *Packard Motor Car Co.*, 61 NLRB 4, the Board reversed *Maryland Drydock* and returned to its earlier view

[1] In *Ford Motor Co.*, 66 NLRB 1317, the Board narrowed the definition of "confidential" employee, stating (*id.* at 1322):

"We have customarily excluded from bargaining units of rank and file workers executive employees who are in a position to formulate, determine, and effectuate management policies. These employees we have considered and still deem to be 'managerial,' in that they express and make operative the decisions of management.

"We have also excluded from units of rank and file employees persons who, in the regular course of their duties, have access to confidential data bearing directly upon the employees' labor relations, designating them as 'confidential.' However, upon reappraisal, we are of the opinion that this definition is too inclusive and needlessly precludes many employees from bargaining collectively together with other workers having common interests. Consequently, it is our intention to limit the term 'confidential' so as to embrace only those employees who assist and act in a confidential capacity to persons who exercise 'managerial' functions in the field of labor relations." [Footnote omitted.]

(see *Union Collieries Coal Co.*, 41 NLRB 961) that a separate unit of foremen was appropriate for bargaining purposes. In so doing, it emphasized that under "our consistent and now well settled position * * * supervisors are 'employees' within the meaning of Section 2(3) of the Act" (*id.* at 6).[8] This Court, by a 5–4 vote, sustained the Board's decision in *Packard*, finding "no basis in this Act whatever for holding that foremen are forbidden the protection of the Act when they take collective action to protect their collective interests." *Packard Motor Car Co.* v. *National Labor Relations Board, supra*, 330 U.S. at 490.[9]

B. THE 1947 AMENDMENTS TO THE ACT

In the 1947 Taft-Hartley amendments to the Act, Congress, overturning *Packard*, provided that supervisory employees are not subject to the Act at all. Both the language of the Act and the legislative history show, however, that Congress did not intend also to exclude from coverage under the Act all of those employees whom the Board had previously excluded

[8] The Board added that its refusal in *Maryland Drydock Co.*, to find appropriate a unit of supervisory personnel was not based on the ground that supervisors were excluded from the Act, but on the view that "the policies of the Act would not be effectuated by the establishment of bargaining units composed of supervisory employees" (61 NLRB at 8). See *Packard Motor Car Co.* v. *National Labor Relations Board*, *supra*, 330 U.S. at 492, n. 3.

[9] The dissenting Justices in *Packard* were of the view that the Act should be construed as putting "in the employer category all those who acted for management not only in formulating but also in executing its labor policies." 330 U.S. at 496; see also *id.*, at 500.

from rank-and-file bargaining units as "managerial" personnel.

The House Bill excluded supervisors from the definition of employee, and defined a supervisor as including not only those individuals with power to hire, transfer, promote, discharge, reward, or discipline other employees, or effectively to recommend such action, but also: (1) personnel who fix or make effective recommendations with respect to the wages earned by other employees, and those who make effective recommendations with respect to the application of factors upon which wages are determined; (2) labor relations, time-study, police and guard personnel; and (3) confidential employees. The Bill defined the latter as any individual "who by the nature of his duties is given by the employer information that is of a confidential nature, and that is not available to the public, to competitors, or to employees generally, for use in the interest of the employer." Sec. 2(12) of H.R. 3020, 80th Cong., 1st Sess. 10–11, as passed by the House, 1 Legislative History of the Labor Management Relations Act, 1947 (hereafter "Leg. Hist.") 167–168.

The House Report explained that, "when the foremen unionize, even in a union that claims to be 'independent' of the union of the rank and file, they are subject to influence and control by the rank and file union, and, instead of their bossing the rank and file, the rank and file bosses them." H. Rep. No. 245, 80th Cong., 1st Sess. 14; 1 Leg. Hist. 305. Respecting the exclusion of confidential employees, the House Report added: "The Board, itself, normally excludes from bargaining units

confidential clerks and secretaries to such people as these. But protecting confidential financial information from competitors and speculators, protecting secret processes and experiments from competitors, and protecting other vital secrets ought not to rest in the administrative discretion of the Board or on the responsibility of whatever union happens to represent the employees." H. Rep. No. 245, *supra*, at 23; 1 Leg. Hist. 314. Whether the House bill would have excluded buyers such as those in the present case is doubtful, but we need not speculate as to that for the Senate bill, which was ultimately adopted, was significantly narrower in its exclusions.

The Senate Bill excluded supervisors from the coverage of the Act, but defined that term more narrowly:

> (11) The term "supervisor" means any individual having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, [or responsibly to direct them],[10] or to adjust their grievances, or effectively to recommend such action if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. [Sec. 2(11) of S. 1126, 80th Cong., 1st Sess. 6; 1 Leg. Hist. 104.]

The Senate Report explained that unionization of supervisors "into organizations composed of or subservient to the unions of the very men they were hired

[10] This clause was added on the floor by Senator Flanders. 93 Cong. Rec. 4677–4678; 2 Leg. Hist. 1303–1304.

to supervise" had led to a diminution in disciplinary action by supervisors and an increase in industrial accidents, and threatened to deprive management "of the undivided loyalty of its foremen." The Report added: "In drawing an amendment to meet this situation, the committee has not been unmindful of the fact that certain employees with minor supervisory duties have problems which may justify their inclusion in [the] act. It has therefore distinguished between straw bosses, leadmen, set-upmen, and other minor supervisory employees * * * and the supervisor vested with such genuine management prerogatives as the right to hire, or fire, discipline, or make effective recommendations with respect to such action." S. Rep. No. 105, 80th Cong., 1st Sess. 3–5; 1 Leg. Hist. 409–411.[11]

The debate on the bill in the Senate makes clear that the narrower Senate definition represented a rejection of the views of those who, instead of merely overturning the *Packard* decision, wanted to exclude wider categories of employees from the Act. The following colloquy is particularly revealing:

[11] The Senate Report pointed out that, by restricting the exclusionary provision "to the front line of management," the Senate definition "has fully met some of the technical criticisms to the corresponding section referred to in the President's veto of that [the Case] bill." S. Rep. No. 105, *supra*, at 5; 1 Leg. Hist. 411. In his veto message of the Case bill, which had passed Congress the previous year, President Truman had expressed concern that the bill "would strip from supervisory employees the rights of self-organization and collective bargaining now guaranteed them under the National Labor Relations Act. * * * The full right of supervisory employees to the benefits of collective bargaining is one that cannot be lightly thrown aside. On the other hand, management is entitled to

Mr. AIKEN. The Senator will recall and I think it should be in the RECORD, that the definition of a supervisory employee was considerably changed in committee. As originally written into the bill, it included night watchmen, timestudy men, all guards, and many other types of workmen, who very clearly were not supervisors.

Mr. ELLENDER. The Senator is correct.

Mr. AIKEN. The committee then more closely defined the word "supervisor," to include supervisors in fact, rather than all the other groups of employees whom some employers would like to have had included in the list of supervisory employees, so that such employees would not be able to join the union and gain the benefits of the Labor Relations Act.

Mr. ELLENDER. I may say to the distinguished Senator that, as I recall, the committee by its definition excluded guards from the original definition of supervisory personnel.

Mr. AIKEN. That is correct.

Mr. ELLENDER. Our amended definition also excludes the straw boss. What the committee did was to limit supervisory employees, by definition, to those having power to hire and fire for the benefit of the employer, and those who are permitted the exercise of independent judgment. That, in essence, is the definition of a supervisory employee. * * *

[93 Cong. Rec. 4136; 2 Leg. Hist. 1064–1065.]

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proper protection. Somewhere in the area of disagreement between the parties the line can be drawn with reasonable accuracy." 92 Cong. Rec. 6677.

The Conference Committee accepted the Senate's definition of supervisor. With reference to those additional employees who had been included within the House, but not the Senate, definition, the Conference Report stated:

> In the case of persons working in the labor relations, personnel and employment departments, it was not thought necessary to make specific provision, as was done in the House bill, since the Board has treated, and presumably will continue to treat, such persons as outside the scope of the act. This is the prevailing Board practice with respect to such people as confidential secretaries as well, and it was not the intention of the conferees to alter this practice in any respect.[12] * * * [H. Conf. Rep. No. 510, 80th Cong., 1st Sess. 35; 1 Leg. Hist. 539.]

In sum, prior to the 1947 amendments, the Board had held that the Act covered both managerial and supervisory employees, but that those employees should not be included in bargaining units with other employees. In the 1947 amendments, Congress specifically excluded supervisory employees from the coverage of the Act, but it narrowly defined "supervisor" so as to encompass only "the front line of management" (S. Rep. No. 105, *supra*, at 5; 1 Leg. Hist. 411)—those who had genuine authority to direct or affect the employees' working conditions. Congress did not alter

[12] The Conference Report errs in stating it was prevailing Board practice to treat the persons specified as "outside the scope of the act." As shown (pp. 14–16), the Board had generally held only that it was not appropriate to include such persons in bargaining units with other employees. See also Pet. App. A, p. 38, n. 13.

the Board's preexisting practice with respect to managerial—as opposed to supervisory—employees except in one respect. The legislative history evidenced an intention by Congress that "persons working in the labor relations, personnel and employment departments" whom it thought the Board had treated "as outside the scope of the act" (but whom the Board had usually merely excluded from units of other employees) would remain uncovered by the Act (*supra*, p. 22). The buyers at issue here are not such employees.

C. THE BOARD'S CONCLUSION THAT MANAGERIAL EMPLOYEES ARE EXCLUDED FROM THE COVERAGE OF THE ACT ONLY WHERE THERE IS LIKELIHOOD OF A "CONFLICT OF INTEREST" IS CONSISTENT WITH THE 1947 AMENDMENTS

In the light of this legislative history, the language of the Act, and the Board's past practice, the Board correctly concluded that Congress did not intend to exclude all managerial employees from the coverage of the Act, but rather left it to the Board to determine "those managerial types who ought properly to be excluded," on the basis of "an examination as to whether the duties and responsibilities of any managerial employee or group of managerial employees do or do not include determinations which should be made free of any conflict of interest which could arise if the person involved was a participating member of a labor organization" (Pet. App. E, p. 74).

First, many of the persons whom the Board has found to be managerial employees (see n. 6, *supra*) can hardly be considered "front line of management."

In view of the expressed congressional concern that the exclusion from coverage be narrowly drawn and that "minor supervisory personnel" not be denied the protection of the Act, it is unlikely that Congress, without stating so, intended to exclude "all managerial personnel, conceivably even those whose only 'managerial' functions involve a determination of what sources of supply should be used in making purchases of less than $5,000" (Pet. App. E, p. 72).

Second, the Board's prior exclusion of "persons working in the labor relations, personnel and employment departments" from rank and file units rested not merely on the fact that they were managerial employees, but "upon the premise that conflicts of interest are likely to arise between the collective employee group represented by a labor organization and personnel working as, with, or for management representatives whose area of responsibility includes bargaining with such a labor organization" (Pet. App. E, p. 72). See cases discussed, *supra*, pp. 14–16.[13]

Contrary to the conclusion of the court below, the Board's interpretation of the 1947 amendments gives full effect to the views of the dissenting Justices in *Packard, supra,* which prompted Congress to exclude supervisors from the coverage of the Act. As noted

[13] See also *Westinghouse Electric Corp.* v. *National Labor Relations Board*, 398 F. 2d 669, 670 (C.A. 6): "The Board has long held that employees who 'assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations' are deemed confidential employees and may be excluded from a bargaining unit. * * * The broad rationale behind this rule is that employees should not be placed in a position involving a potential conflict of interests * * *."

(n. 9 *supra*), the dissenters believed that the Act should be construed as putting "in the employer category all those who acted for management not only in formulating but also in executing its labor policies." The Board's conflict of interest test excludes from the coverage of the Act managerial employees who are involved with labor policies. The employees here, however, have nothing to do with labor policies.

Nor does the Board's position with respect to managerial employees lead to the result prophesized in "the portion of Mr. Justice Douglas' *Packard* dissent relating to the organization of executives" (Pet. App. A, p. 34).[14] None of the employees in question here even approaches that level in the company hierarchy. Moreover, as the Board stated (Pet. App. E, pp. 73–74):

> * * * [A] corporate representative, charged with the duty of determining where an employer's plants should be located or what capital expenditures a corporation ought to make, may well have such broad managerial discretion as to necessarily involve the determination of matters affecting employment and employment policies that he should be excluded from coverage. It may be that his decisions inevitably will

[14] Justice Douglas stated in his dissent (330 U.S. at 494):

"[I]f foremen are 'employees' within the meaning of the National Labor Relations Act, so are vice-presidents, managers, assistant managers, superintendents, assistant superintendents—indeed, all who are on the payroll of the company, including the president; all who are commonly referred to as the management, with the exception of the directors. If a union of vice-presidents applied for recognition as a collective bargaining agency, I do not see how we could deny it and yet allow the present application."

> encompass the field of labor relations, even though corporate organization charts may not, on their face, classify him as charged directly with labor relations policymaking.
>
> A like analysis might also dictate the exclusion of those bearing primary responsibility for determination of financial policies, or even those charged with the direction of basic policies in the field of research. * * * [15]

The conclusion of the court below that Congress intended to exclude all true managerial employees from the coverage of the Act rests upon grounds which do not withstand analysis. First, the court noted that the "1947 Congress clearly believed that at least some 'managerial employees' other than 'supervisors' were excluded from the protections of the Act" (Pet. App. A, p. 38). But, as we have shown (pp. 23–24, *supra*), the fact that Congress intended to exclude some managerial employees does not justify the conclusion that it intended to exclude all such employees. Second, relying on the Board's decision in *Swift & Co.*, 115 NLRB 752 (discussed below), the court ruled that "[i]n 1956 the Board concluded that the Congress had meant to exclude all true 'managerial employees,'" and that this interpretation "had been so clearly defined for the 1959 Congress, the

[15] There is no likelihood that the Board's view that managerial employees are covered by the Act unless there is a conflict of interest between their job and their union responsibilities would lead to a situation that, "while 'confidential secretaries' could not be organized, their bosses could be" (Pet. App. A, p. 34). The Board, in *Ford*, *supra*, n. 7, made clear that secretaries handling confidential matter were entitled to exempt status only to the extent that their bosses were.

Board is not now free to decide the contrary" (Pet. App. A, pp. 38, 39). The court has overstated the significance of *Swift*.

In *Swift, supra,* the Board held that a separate unit of poultry procurement drivers could not be considered appropriate for collective bargaining because the drivers were "representatives of management." In so holding, the Board stated that "[i]t was the clear intent of Congress to exclude from the coverage of the Act all individuals allied with management." Such individuals cannot be deemed to be employees for purposes of the Act" (115 NLRB at 753–754). This sweeping and inaccurate statement was contrary to numerous Board decisions immediately after the enactment of the 1947 amendments which held that managerial employees, not presenting a conflict of interest problem, were to be excluded from rank-and-file bargaining units,[16] but not from coverage of the Act. It cannot be taken as a contemporaneous interpretation of congressional intent, which did not go that far. Nor, if it is taken as a statement of Board policy,[17]

[16] See, *e.g., Palace Laundry Dry Cleaning Corp.*, 75 NLRB 320, 323, n. 4; *Wise, Smith & Company, Inc.*, 83 NLRB 1019, 1021; *Westinghouse Electric Corp.*, 89 NLRB 8, 14.

Although the Board did state in *American Locomotive Co.*, 92 NLRB 115, 117 that the buyers there, as "managerial employees," could "not be accorded bargaining rights under the Act," the cases cited as authority (*Wise* and *Westinghouse, supra*) involved merely an exclusion of buyers from rank-and-file units.

[17] Thus, as the court below acknowledged (Pet. App. A, pp. 35–36, n. 11), the Board, in cases subsequent to *Swift*, merely held that managerial employees should be excluded from bargaining units of other employees.

And, despite the broad language in the Board's decision in *Swift*, the District of Columbia Circuit, in a secondary boy-

does it preclude the Board from modifying that policy—created by one adjudication—in a subsequent adjudication.[18] See *Local 761, Int'l Union of Electrical Workers* v. *National Labor Relations Board*, 366 U.S. 667, 674; *Packard Motor Car Co.* v. *National Labor Relations Board, supra*, 330 U.S. at 492. Since the 1959 amendments to the Act were concerned with secondary boycott and picketing, and not with the scope of coverage of managerial employees, Congress's silence regarding *Swift* when it considered these amendments was not a ratification or adoption of the Board's *Swift* decision.

D. THE BOARD WAS WARRANTED IN FINDING THAT THE BUYERS HERE WERE NOT THE KIND OF MANAGERIAL EMPLOYEES WHO WERE EXCLUDED FROM THE COVERAGE OF THE ACT

The buyers here have no responsibilities in the personnel or labor relations fields and are not high company officers. Nor was their discretion so broad that it allowed them to select vendors on the basis of whether the latter's employees were unionized.

---

cott proceeding, interpreted it as being applicable only to buyers who, like those in *Swift*, were acting as agents of their employers. The court found that the buyers in the case before it, who were employed by meat markets, were "so identified with employee and Union activity as to be within the statutory meaning of 'employees' for purposes of section 8(b)(4)(A)." *Amalgamated Meat Cutters* v. *National Labor Relations Board*, 237 F. 2d 20, 27 (C.A. D.C.), certiorari denied, 352 U.S. 1015.

[18] In *North Arkansas Electric Co-op, supra*, 185 NLRB at 551, n. 8, the Board overruled *Swift* to the extent that it was inconsistent with its decision in the later case.

As the Board found, "policy guides for 'make or buy' decisions can clearly be established and enforced, so that any possible temptation to allow sympathy for sister unions to influence such decisions could effectively be controlled" by the Employer.[19] Moreover, "the buyers cannot commit the Employer's credit for amounts above $5,000 without the concurrence of higher authority. * * * Nor can they cancel an order and select an alternate vendor without the concurrence of other officials if the amount involved exceeds $5,000." And, "in many instances the type of item to be procured will limit the buyer to a particular vendor." (Pet. App. D, pp. 62–63.)

Accordingly, the Board was justified in concluding that the Company had failed to demonstrate that there would exist a conflict of interest between the buyers' responsibilities to a union and their responsibilities to the Company.[20] It thus properly found the buyers to be employees covered by the Act.

II. THE BOARD WAS NOT REQUIRED TO CONDUCT A RULE-MAKING RATHER THAN AN ADJUDICATORY PROCEEDING TO DETERMINE WHETHER RESPONDENT'S BUYERS ARE EMPLOYEES COVERED BY THE ACT

The court below recognized that on reconsideration, the Board could find that respondent's buyers are not

[19] The Company has a management committee which determines whether any given item is purchased or made in house (A. 126).

[20] The Board added that the "Employer would still retain the power to discipline or discharge [buyers] * * * for improper performance of duty, subject only to such limitations as he might agree to during negotiations" with the union (Pet. App. D, p. 63).

true managerial employees. It held, however, that the agency could make that determination only in a general rule-making proceeding, and not in adjudicatory proceedings. The latter holding is contrary to settled principles governing the discretion of an administrative agency to select the appropriate procedure for deciding particular issues, and would require an inappropriate procedure for deciding the issue here.

In *Securities & Exchange Commission* v. *Chenery Corp.*, 332 U.S. 194, this Court held that, while "[t]he function of filling in the interstices of the [Securities] Act should be performed, as much as possible, through [the] * * * quasi-legislative promulgation of rules to be applied in the future * * * any rigid requirement to that effect would make the administrative process inflexible and incapable of dealing with many of the specialized problems which arise" (*id.* at 202). The Court added that "the choice made between proceeding by general rule or by individual, *ad hoc* litigation is one that lies primarily in the informed discretion of the administrative agency" (*id.* at 203).

National Labor Relations Board v. *Wyman-Gordon Company*, 394 U.S. 759, reaffirmed these principles. The plurality opinion there recognized that "[a]djudicated cases may and do, of course, serve as vehicles for the formulation of agency policies, which are applied and announced therein" (*id.* at 765). The concurring opinion of three other Justices emphasized that Congress had given the Board both quasi-legislative and quasi-judicial powers, that "[n]o language in the National Labor Relations Act requires that the grant or the exercise of one power was intended to

exclude the Board's use of the other," and that the choice between the two "lies primarily in the informed discretion of the administrative agency" (*id.* at 771, 772).[21]

The Board acted reasonably in determining the status of the Company's buyers in an adjudicatory, rather than a rule-making, proceeding. The court below assumed that the Board was "prescribing a new policy, not just with respect to 25 buyers in Wheatfield, N.Y., but * * * 'to fit all cases at all times'" (Pet. App. A, p. 43). However, as shown (pp. 27–28), the principle which the Board applied here—*i.e.*, that managerial employees are not excluded from the Act's coverage unless it is likely that there will be a conflict of interest between their job and their union responsibilities—is not novel; the contrary view ex-

[21] The factor in *Wyman-Gordon* which caused two Justices to dissent was not that the Board had formulated the requirement that the employer supply the union with the names and addresses of employees eligible to vote in a scheduled representation election in an adjudicatory proceeding, the *Excelsior* case, 156 NLRB 1236. Rather, it was that, by declining to apply the requirement in the *Excelsior* case itself, and instead directing that it be applicable to all election proceedings arising 30 days thereafter, the Board appeared to be engaging in rule-making without complying with Section 4 of the Administrative Procedure Act. See 394 U.S. at 775–777, 780–781. As Justice Douglas stated, "I am willing to assume that, if the Board decided to treat each case on its special facts and perform its adjudicatory function in the conventional way, we should have no difficulty in affirming its action." *Id.* at 775–776. That is precisely what the Board has done here. The Board, after examining the facts of this particular case, held that the duties of the Company's buyers were not such as would be likely to create a conflict of interest, and thus deprive them of the protection of the Act. The determination was effective in the adjudicatory proceeding in which it was made.

pressed in *Swift* and not reflected in the language of the Act was the aberration. Moreover, in adjudicating the case the Board reached a decision tailored to the particular facts; it did not state a conclusion which purported to be applicable to all buyers (Pet. App. D, pp. 62–64; Pet. App. E, p. 75).

The court below, in support of its conclusion that the Board must conduct a rule-making proceeding as to the coverage of all buyers, stated that "[t]here must be tens of thousands of manufacturing, wholesale and retail units which employ buyers, and hundreds of thousands of the latter" (Pet. App. A, p. 43). But this fact militates against a rule-making, rather than an adjudicatory, proceeding. In view of this large number of buyers in American industry and the fact that their duties vary from industry to industry, company to company, and even among employees within the same company, a proceeding which attempted to formulate criteria to govern the entire class would be likely to produce only broad general standards of little utility.[22] It is doubtful that a rule could be framed with sufficient particularity to make clear which of the many thousands of buyers are excluded from coverage of the Act. Application in concrete cases would still necessitate recourse to the

[22] For example, the fact that a buyer can commit $5,000 on his signature alone may be significant where the items purchased are low priced, but not where they are high priced. Similarly, the fact that the buyer has discretion to choose suppliers may have less significance where the potential suppliers are limited in number, than where there is a large pool of suppliers to choose from. Moreover, one buyer's detailed instructions may still leave him with discretion in more important areas than do other buyers' less detailed instructions.

Board's settled practice of deciding the applicability of the Act to particular types of employees on a case-by-case basis.[23]

Accordingly, by requiring the Board to conduct a rulemaking proceeding to determine the application of the Act to all buyers without any particular factual situation before it, the court below has required the Board to follow a procedure which is likely to impede, rather than enhance, a prompt and judicious resolution of that question.

CONCLUSION

The judgment of the court below should be reversed and the case should be remanded to that court with directions to enforce the Board's order.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

PETER G. NASH,
General Counsel,
JOHN S. IRVING,
Deputy General Counsel,
PATRICK HARDIN,
Associate General Counsel,
NORTON J. COME,
Deputy Associate General Counsel,
LINDA SHER,
Attorney,
National Labor Relations Board.

NOVEMBER 1973.

[23] Since this Court's decision in *Wyman-Gordon*, however, the Board has instituted rule-making proceedings in those areas where, in its judgment, they were appropriate—*e.g.*, the promulgation of standards for the exercise of jurisdiction over private colleges and universities. (See Pet. App. A, pp. 40–41, n. 14.)

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

Sec. 2. When used in this Act—

* * * * * * *

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or

any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

* * * * * * *

(11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

The relevant provisions of the Administrative Procedure Act (5 U.S.C. § 551, *et seq.*) are as follows:

§ 553. Rule making

(a) This section applies, according to the provisions thereof, except to the extent that there is involved—

(1) a military or foreign affairs function of the United States; or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply—

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

(2) interpretative rules and statements of policy; or

(3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

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SUPREME COURT, U. S.

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BELL AEROSPACE CO., DIVISION OF TEXTRON, INC.

On a Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

Motion for Leave to File Brief of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) as Amicus Curiae and Amicus Curiae Brief.

JOHN FILLION,
8000 Jefferson Boulevard,
Detroit, Michigan 48214,
General Counsel, UAW,

STEPHEN SCHLOSSBERG,
1125 15th Street, N.W.,
Washington, D.C. 20005.
General Counsel, UAW,

ABE F. LEVY,
VICTOR VAN BOURG,
CHARLES K. HACKLER,
JACK LEVINE,
Of Counsel.

LEVY, VAN BOURG & HACKLER,
3550 Wilshire Boulevard, Suite 1020,
Los Angeles, Calif. 90010,
Attorneys for Amicus.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

SUBJECT INDEX

Page

Motion for Leave to File Brief of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) as Amicus Curiae 1

Conclusion 4

Brief for the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) as Amicus Curiae 5

Interest of the UAW 5

Summary of the Argument 5

Argument 8

I.

The Treatment of "Managerial Employees" by the Board Is Consistent With the Legislative History and With Prior Judicial Interpretations of the Act 8

A. The Legislative History Does Not Indicate That Congress Desired to Exclude From the Protections of the Act All Employees Who Formulate, Determine and Effectuate Company Policies 8

B. The Policy Enunciated by the Board With Respect to "Managerial Employees" Merely Constitutes a Correlation, Integration and Logical Extension of Prior Judicial Interpretations of the Act 10

II. Page

A Sweeping Decision Which Would Exclude Hundreds of Thousands of Professional and Technical Workers From the Protections of the Act Would Be Contrary to the Labor Policies of this Country 19

Conclusion 22

TABLE OF AUTHORITIES CITED

Cases	Page
AFL-CIO, 120 NLRB 969 (1958)	12
Bell Aerospace Company Div. of Textron, Inc. v. NLRB, 475 F.2d 485 (2d Cir. 1973)	10, 17, 18
Journal-Register, Inc. v. NLRB, 412 F.2d 37 (7th Cir. 1969)	15, 16
North Arkansas Electric Cooperative, Inc., 185 NLRB No. 83 (1970)	16, 19, 20
North Arkansas Electric Cooperative v. NLRB, 446 F.2d 602 (8th Cir. 1971)	16
Packard Motor Co., 64 NLRB 1212 (1945)	9
Packard Motor Co. v. NLRB, 330 U.S. 485 (1947)	9
Palace Laundry Dry Cleaners Corp., 75 NLRB 320 (1947)	11
Retail Clerks v. NLRB, 336 F.2d 642 (D.C. Cir. 1966), cert. den., 386 U.S. 1017 (1967)	13, 14, 15
Textron Inc. (Bell Aerospace), 190 NLRB No. 66 (1971)	8, 16
Textron Inc. (Bell Aerospace), 196 NLRB No. 127 (1972)	8, 16
Textron Inc. (Bell Aerospace), 197 NLRB No. 30 (1972)	8

Miscellaneous

Bureau of Labor Statistics, Manpower Report, 1966, p. 165	21
93 Congressional Record 3553, 1 Legislative History of the Labor Management Relations Act, 1947, pp. 646-647	9

Page

93 Congressional Record 3952, 2 Legislative History of the Labor Management Relations Act, 1947, pp. 1008-1009 9

93 Congressional Record 4804, 2 Legislative History of the Labor Management Relations Act, 1947, pp. 1303-1304 9

House Conference Report No. 510, 80th Congress, 1st Sess., p. 35, 1 Legislative History of the Labor Management Relations Act, 1947, p. 539 10

House Report No. 245, 80th Congress, 1st Sess., pp. 13-17, 1 Legislative History of the Labor Management Relations Act, 1947, pp. 304-308 .. 9

House Report No. 3020, 80th Congress, 1st Sess., pp. 10-11, Sec. 2(12), 1 Legislative History of the Labor Management Relations Act, 1947, pp. 167-168 9

Senate Report No. 105, 80th Congress, 1st Sess., pp. 3-5, 1 Legislative History of the Labor Management Relations Act, 1947, pp. 409-411 9

United States Census Bureau, Statistical Abstract of the United States, 1972, p. 230 .....2, 21

United States Department of Labor, Bureau of Labor Statistics, The U.S. Economy in 1980, p. 23.. 22

Rules

Rules of the United States Supreme Court, Rule 42 1

Statutes

National Labor Relations Act, Sec. 1 19

National Labor Relations Act, Sec. 2(3) 8

National Labor Relations Act, Sec. 2(12) 19, 20

National Labor Relations Act, Sec. 9(b) 19

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Motion for Leave to File Brief of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) as Amicus Curiae.

It is hereby respectfully moved, pursuant to Rule 42 of the Rules of this Court, that the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) be granted leave to file the accompanying brief *amicus curiae* in support of the Petitioner.

A letter of consent from the Petitioner has been filed with the Clerk. Respondent has declined to consent to the filing of a brief *amicus curiae*.

The UAW is an international labor union with a total membership of approximately 1,500,000 working men and women.

Initially, the UAW has an immediate interest in the outcome of this matter since one of its affiliated local unions is the certified collective bargaining representative for the employees in issue.

More importantly, however, the UAW has an acute interest in the resolution of the "managerial employee" issue since a determination that *all* "managerial employees" are not entitled to the protection of the National Labor Relations Act would seriously, adversely affect existing and planned UAW organizing campaigns.

More specifically, the UAW has made a philosophical and economic commitment to engage in an intensified effort to organize a substantial segment of the more than 11,500,000[1] professional and technical workers employed in this country.[2] In fact, the UAW

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[1]U.S. Census Bureau, *Statistical Abstract of the United States*, 1972, page 230.

[2]Indicative of this commitment is the following resolution which was passed at the UAW Constitutional Convention held during the spring of 1972:

"WHEREAS: The UAW has found strength in diversity. Time after time we have found that the combined power of production, skilled and other workers has worked to the advantage of each and to the benefit of the whole Union, and

WHEREAS: As we go to bargain with our employers, to participate in political campaigns and to fight for legislative justice, we find that the UAW would be greatly strengthened if we could include the resources and numbers of professional personnel, who stand in need of the strength they can gain from a powerful mass-based union devoted to improving the quality of life for its members and the whole society, and

WHEREAS: Many professionals are completely unorganized, while some are in relatively small associations and organizations, and

WHEREAS: Professionals, despite their years of specialized education, training and experience, face many of the same economic and social problems as production, skilled, office and technical workers. They, too, must reckon with unemployment, managerial tyranny, inadequate fringe bene-

has already initiated many campaigns to organize professional and technical workers, some of which are currently pending before the National Labor Relations Board.

A ruling by this Court that all employees who formulate, determine and effectuate company policies are not entitled to the protections of the Act, whether or not their duties are such that they would create a conflict of interest between their job responsibilities and their responsibilities to a labor organization, would effectively preclude the organization of most profes-

---

fits and all of the other problems plaguing UAW members, and

WHEREAS: It seems clear that mounting threats to their security have convinced professionals that old attitudes and approaches will not solve their problems and they need to adopt more aggressive collective bargaining tactics, and

WHEREAS: We recognize that these professionals can make a great contribution to the common good and to the solution of their own problems by joining with us in the UAW, working together on common problems and, at the same time, pursuing solutions to their own special problems, and

WHEREAS: The UAW recognizes the need to unite in one great union those who do unskilled, skilled, technical, office and professional work so that the full strength of union may be brought to bear on common problems. The UAW also recognizes that, in addition to the interests shared with other workers, true professional workers have special needs and problems, now, therefore, be it

RESOLVED:

1. The International Executive Board is directed to intensify the UAW effort to organize professional personnel, with special emphasis on those who work in industries in which the UAW presently bargains.

2. The International Executive Board is authorized and empowered to negotiate with existing organizations of professionals with a view to bringing the membership of such organizations into the UAW.

3. The International Executive Board is authorized and empowered to take whatever action is required, including interim constitutional changes, to bring professionals into the UAW individually or in groups."

sional and many technical workers. This unprecedented result would occur because, by virtue of their expertise and the highly specialized nature of their work, professional and technical employees often are relied upon to participate in the formulation of company policies with respect to the technical aspects of the business. Thus, a sweeping ruling excluding all so-called "managerial employees" could result in denying hundreds of thousands of employees the right to organize, merely because they are more skilled and have greater expertise than the typical rank and file worker.

Therefore, because the UAW has committed its resources to the organization of professional and technical employees, its interest in the determination of this matter is manifest.

Conclusion.

For the foregoing reasons the UAW respectfully submits that its motion for leave to file a brief *amicus curiae* should be granted.

Respectfully submitted,

JOHN FILLION,
General Counsel, UAW,

STEPHEN SCHLOSSBERG,
General Counsel, UAW.

ABE F. LEVY,
VICTOR VAN BOURG,
CHARLES K. HACKLER,
JACK LEVINE,
Of Counsel.

LEVY, VAN BOURG & HACKLER,
Attorneys for Movant.

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Interest of the UAW.

The interest of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) is set forth in the preceding motion.

Summary of the Argument.

The argument of the UAW consists of the following three interrelated contentions:

(1) The legislative history of the Taft-Hartley amendment to the Act indicates that Congress intended to exclude from the protections of the Act employees

who formulate certain types of company policy related to labor relations. The legislative history does not, however, indicate that Congress intended to exclude *all* employees who formulate *any* type of company policy, regardless of the overall significance of the policy being formulated. Thus, the policy enunciated by the Board in this case with respect to the treatment of so-called "managerial employees" is consistent with the legislative history.

(2) The current method of treating "managerial employees" adopted by the Board does not constitute a change in Board policy and is consistent with prior decisions of the Board and Courts. More specifically, a close analysis of these decisions indicates that subsequent to the enactment of the Taft-Hartley amendment the Board has endeavored to narrow its definition of "managerial employees" so as not to exclude employees who exercise discretion and are given responsibilities, yet who nevertheless do not actually constitute part of the "managerial hierarchy". In this sense, the current policy of the Board can be viewed as an attempt to further refine the definition of "managerial employees." Finally, since the refinements included in the current Board policy are entirely consistent with previously judicially approved criteria, the restated policy should be approved.

(3) The stated labor policy of the United States is to encourage collective bargaining. Furthermore, this policy is statutorily made applicable to professional employees as well as to nonprofessionals. Since profes-

sional and technical employees definitionally utilize discretion in the performance of their work, and since under the previously judicially accepted definitions of "managerial employees" the utilization of discretion is an indicia of managerial status, a refusal to implement the Board's current policy could result in most professional and technical workers being excluded from the protections of the Act. Thus, the effect of a sweeping ruling excluding all employees who qualify as "managerial" under the previously accepted definitions would be contrary to the labor policies of this country in that professional and technical employees would effectively be precluded from bargaining collectively.

ARGUMENT.

I.

The Treatment of "Managerial Employees" by the Board Is Consistent With the Legislative History and With Prior Judicial Interpretations of the Act.

The Board, in the proceedings below,[1] ruled that so called "managerial employees" are within the statutory definition of "employee" and are therefore entitled to the protections of the National Labor Relations Act, unless they exercise such broad managerial discretion as to necessarily involve the determination of matters affecting employment and employment policies. The effect of this interpretation of Section 2(3) of the Act (the statutory definition of the term "employee") is consistent with the legislative history of the Act and with prior judicial interpretations of Section 2(3).

A. The Legislative History Does Not Indicate That Congress Desired to Exclude From the Protections of the Act All Employees Who Formulate, Determine and Effectuate Company Policies.

As will subsequently be more fully elaborated, the UAW contends that the "managerial employee" issue arises not from a dispute concerning the propriety of a policy of the National Labor Relations Board, but rather has emerged due to a historic (and semantic) problem in defining the term "managerial employee".

In this respect, the legislative history of the Taft-Hartley amendment to the Act does not provide any clarification of the term because "managerial employees"

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[1] *Texton Inc. (Bell Aerospace)*, 190 NLRB No. 66 (1971), 196 NLRB No. 127 (1972) and 197 NLRB No. 30 (1972).

were never referred to as such within the proposed bills or in the Congressional debates. Rather, what can be gleaned from the legislative history is an indication as to which employees Congress intended to exclude from the protections of the Act.

The legislative history is clear that the primary Congressional intent in statutorily redefining the term "employee" was to preclude supervisors from unionizing.[2]

Although the bill originally passed by the House of Representatives would also have specifically excluded labor relations, time-study, police, guard personnel and confidential employees in addition to supervisors[3], no reference was ever made in either the House or the Senate to a possible exclusion of *all* employees who formulate, determine and effectuate company policies. In fact, the only indication that Congress intended any employees other than supervisors to be excluded from the protections of the Act, is the following statement contained in the report of the Conference Committee:

> "In the case of persons working in the labor relations, personnel and employment depart-

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[2]In *Packard Motor Co.*, 64 NLRB 1212 (1945) the Board approved a bargaining unit comprised of supervisors. The Supreme Court affirmed in *Packard Motor Co. v. NLRB*, 330 U.S. 485 (1947).

The legislative history concerning the redefinition of the term "employee" clearly indicates that the primary purpose of the redefinition was to reverse the holding of the Supreme Court in *Packard Motor Co. v. NLRB*, *supra*. See, *e.g.*, H. Rept. No. 245, 80th Cong., 1st Sess., 13-17, 1 Legislative History of the Labor Management Relations Act, 1947 (hereafter "Leg. Hist.") 304-308; S. Rept. No. 105, 80th Cong., 1st Sess., 3-5; 1 Leg. Hist., *supra*, at 409-411; 93 Cong. Rec. 3553, 1 Leg. Hist., *supra*, at 646-647; 93 Cong. Rec. 3952, 2 Leg. Hist., *supra*, at 1008-1009; 93 Cong. Rec. 4804, 2 Leg. Hist., *supra*, at 1303-1304.

[3]Sec. 2(12) of H.R. 3020, 80th Cong., 1st Sess., 10-11, 1 Leg. Hist., *supra*, at 167-168.

ments, it was not thought necessary to make specific provision, as was done in the House bill, since the Board has treated, and presumably will continue to treat, such persons as outside the scope of the act. This is the prevailing Board practice with respect to such people as confidential secretaries as well, and it was not the intention of the conferees to alter this practice in any respect."[4]

In conclusion, although the legislative history of the Taft-Hartley amendment to the Act would support a contention that Congress intended to exclude from the protections of the Act employees who formulate and implement certain, specific kinds of company policy—*i.e.*, labor relations policies—the legislative history *does not* support a contention that Congress intended to exclude *all* employees who formulate, determine or effectuate *any* type of company policy.

B. The Policy Enunciated by the Board With Respect to "Managerial Employees" Merely Constitutes a Correlation, Integration and Logical Extension of Prior Judicial Interpretations of the Act.

In the proceedings before the Court of Appeals for the Second Circuit[5] the Respondent contended, and the Board evidently concurred, that the policy enunciated by the Board with respect to the treatment of so-called "managerial employees" constituted a reversal of prior Board policy.[6] As previously alluded to, the UAW views the situation somewhat differently.

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[4]H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 35, 1 Leg. Hist., *supra*, at 539.

[5]*Bell Aerospace Company Div. of Textron, Inc. v. NLRB*, 475 F.2d 485 (2d Cir. 1973).

[6]*See generally, Bell Aerospace Co. Div. of Textron, Inc. v. NLRB, id.*, at 494-495.

The UAW contends that a close analysis of the evolution of the treatment of "managerial employees" by the Board and Courts demonstrates that the policy enunciated by the Board in this case is actually consistent with the prior policy.

Such an analysis indicates that subsequent to the enactment of the Taft-Hartley amendment to the Act the Board encountered semantic problems in its attempt to delineate those employees it would exclude from the protections of the Act as "managerial employees". In this sense, the current policy of the Board can be seen as a further attempt to narrow the previously ambiguous definition of "managerial employees", a redefinition which is actually entirely consistent with previous judicially accepted definitions of "managerial employees".

In its initial decision regarding this issue subsequent to the enactment of the Taft-Hartley amendment the Board stated its policy regarding managerial employees as follows:

> "We have in the past, and before the passage of the recent amendments to the Act, recognized and defined as 'managerial' employees, *executives* who formulate and effectuate management policies by expressing and making operative the decisions of their employer, and have excluded such managerial employees from bargaining units. . . . We believe the Act, as amended, contemplates the continuance of this practice." (Emphasis supplied.)
>
> *Palace Laundry Dry Cleaners Corp.*, 75 NLRB 320 (1947).

Contrary to the contentions raised on appeal by the Respondent, the UAW contends that the import of this

definition of excludable "managerial employees" was that *executives, i.e.*, those persons responsible for making the principal administrative decisions of the company, be excluded. This policy statement does not support a contention that the Board intended to exclude *all* employees who formulate and effectuate *any* company policy, regardless of the overall insignificance of the policy being determined or the position within the managerial hierarchy of the person making the decision.

In any event, the ambiguity of this early definition of "managerial employees" is self-evident. More specifically, a definite set of criteria delineating the scope of the definition of "executives" or "managerial employees" was not established.

Rather, the Board tended to proceed on a case-by-case basis using what can only be described as its "intuitive sense of the situation" in determining which employees were executives to be excluded as "managerial employees". In most instances, after restating its ambiguous definition, the Board would proceed to state which employees qualified as "managerial" without any seemingly real clarification of its rationale or consistency with the criteria it adopted. See, *e.g.*, *AFL-CIO*, 120 NLRB 969, 973 (1958).

The Board was able to proceed in this *ad hoc* fashion since in most cases there really was little question as to which employees were "executives" and which were "rank and file factory workers". More specifically, since during this period of time (prior to the mid-1960's) most unions were concentrating their efforts towards organizing blue collar workers—most of whom had no responsibility other than the physical perform-

ance of their job and who did not exercise independent discretion in their work—"executives" or "managerial employees" were easily discernible.

However, with the change in the complexion of industry from an "industrial" orientation to a "technological" orientation, the previously acute dichotomy between management and nonmanagement employees began to diminish. As unions began to organize highly skilled employees who were given substantial responsibilities and whose work required the utilization of discretion, the "executives formulating company policy" test became an unworkable tool for discerning which employees were actually part of the managerial hierarchy.

Consequently, in an apparent attempt to reestablish a workable test to delineate those employees whom the Board intuitively believed were not "executives", despite the fact that they utilized discretion and were responsible for making minor decisions, the Board gradually redefined its concept of "managerial employees" by enumerating specific criteria.

Finally, in *Retail Clerks v. NLRB*, 336 F.2d 642 (D.C. Cir. 1966), *cert. denied*, 386 U.S. 1017 (1967), the Board's definitional policy-standard was judicially clarified as consisting of two primary tests:

> "The Board has not developed clear standards for determining what is a managerial employee; there seem, however, to be two tests. The first is whether, even if they do not supervise other workers, *their position with the employer presents a potential conflict of interest between the employer and the workers.* This strand of the managerial employee test is often phrased in a more

conclusory manner, i.e., that the employee is closely related to or aligned with the management; such a determination, however, also seems to turn on the possibility of a conflict of interest arising.

"The Board also excludes from the protection of the Act, as managerial employees, 'those who formulate, determine, and effectuate an employer's policies', and *those who have discretion in the performance of their jobs,* but not if the discretion must conform to an employer's established policy." (Emphasis supplied; citations omitted).

As is evident from this summary of the Board's position, the Board had evolved two determinants which were not reflected in its initial definitions and policy statements:

(1) The conflict of interest, or alignment test, and,

(2) The discretionary formulation of company policy test.

In addition to codifying the tests to be applied in determining managerial status, the *Retail Clerks* Court stated the rationale for excluding managerial employees:

"The rationale for this Board policy, though unarticulated, seems to be the reasonable belief that Congress intended to exclude from the protection of the Act those who comprised a part of 'management' or were allied with it on the theory that they were the ones from whom the workers needed protection."

Clearly, prior to the judicial restatement of its policy in *Retail Clerks v. NLRB, supra,* the Board had attempted to narrow its definition of "managerial em-

ployees" by establishing specific criteria in order to assure that only "those employees from whom the workers needed protection" would be excluded.

It soon became apparent, however, that even the *Retail Clerks* test could not adequately distinguish "executives" or true "managerial employees". More specifically, an employee might, because of his particular expertise, work closely with management officials, yet not actually be part of the managerial hierarchy or in a position where his interests would be opposed to those of other workers.

Consequently, the Board continued to enumerate additional criteria and thereby further narrow its definition of "managerial employees". In particular, the "alignment test" was redefined and subsequently judicially restated in *Journal-Register, Inc. v. NLRB*, 412 F.2d 37 (7th Cir. 1969) as follows:

> "The alignment test is essentially a narrow one in the sense that unless an employee is substantially involved in his employer's labor policies his relationship with management is not one of a managerial employee."

Interestingly, the *Journal-Register* Court apparently did not decipher a direct relationship between the "alignment" and "discretionary formulation of company policies" tests. This direct relationship can be pointed out by noting that, whereas an employee could be aligned with management in such a manner that his interests would not be opposed to those of other workers, similarly an employee could be responsible for formulating certain types of minor company policies, yet not be in a position where his loyalties would necessarily be divided between his employer and a

union. In other words, if the policies the employee is formulating do not directly affect employment matters, the effect of the decision on union co-workers would not be a consideration in the formulation of the policy and therefore no conflict of interests would arise.

Thus, it would have been logical for the Board and/or the Courts to further limit the definition of "managerial employees" so as to include only those employees who formulate labor relations or other policies which have a direct effect on employment matters. Such a redefinition would have, of course, been an entirely consistent extension of the definitional test approved in *Journal-Register Inc. v. NLRB, supra.*

However, rather than further refining its definition of "managerial employees", the Board adopted a different approach in *North Arkansas Electric Cooperative, Inc.*, 185 NLRB No. 83 (1970).

In that case, the Board held that whether or not an employee would have qualified as managerial under existing definitions, unless he formulated "*policy with respect to employee relations matters*" a conflict of loyalties would not arise as a result of his engaging in "concerted activity". The Board further held that there was therefore no logical rationale for concluding that such employees did not qualify as "employees" entitled to the protections of the Act.[7]

In the initial Board proceedings in this case[8], the Board merely readopted and reclarified its policy. More

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[7]The decision of the Board was subsequently reversed in *North Arkansas Electric Cooperative v. NLRB*, 446 F.2d 602 (8th Cir. 1971). The rationale of the opinion of the Circuit Court is, however, somewhat unclear.

[8]*Textron Inc. (Bell Aerospace)*, 190 NLRB No. 66 (1971) and 196 NLRB No. 127 (1972).

specifically, the Board ruled that all employees, irrespective of whether they would have qualified as "managerial" under its previous tests, were entitled to the protections of the Act unless they formulated labor relations policy or exercised "such broad managerial discretion as to necessarily involve the determination of matters affecting employment or employment policies." The Board further explicitly stated that the formulation of other types of policy was not a sufficient basis for denying employees the protections of the Act.

There are, as previously stated, two ways to view this policy of the Board. Initially, the holding in this case can be viewed as a change in policy since it purports to include "managerial employees" within the protections of the Act while the Board had previously excluded such employees.

The policy can, however, also be viewed as a further refinement of the term "managerial employees". In other words, rather than saying that "managerial employees" shall be accorded the protections of the Act unless they perform the specified functions (*i.e.*, formulation of the enumerated types of policies), the Board could properly have stated that only those employees who perform those specific functions shall be defined as excludable "managerial employees".

It is interesting to note that this change in semantics—*i.e.*, new method of approaching the "managerial employee" issue—evidently had a profound effect upon the decision in this case by the Court of Appeals. ***Bell Aerospace Company Division of Textron, Inc. v. NLRB***, 475 F.2d 485 (2d Cir. 1973). More specifically, the Court denied enforcement because it felt it could not be certain that the Board's decision rested

upon a determination that the buyers were "not sufficiently high in the [employer's] hierarchy to constitute 'managerial employees' ", rather than:

> "[on] its new and, in our view, erroneous holding that it was free to regard *all* managerial employees as covered by the Act unless their duties met the 'fundamental touchstone' of including 'determinations which should be made free of any conflict of interest which could arise if the person involved was a participating member of a labor organization'. . . ."

475 F.2d at 494-495.

Thus, evidently, had the Board stated that it was redefining "managerial employees" so as not to include those employees who were not sufficiently high in the managerial hierarchy, and that according to the redefinition the buyers in issue did not constitue "managerial employees", the Court would have granted enforcement.

In other words, the effect of the allegedly new policy of the Board with respect to so-called "managerial employees" is identical to the effect that would have been created had the Board merely redefined and narrowed its concept of "managerial employees" consistent with previous judicially accepted definitions.

The UAW respectfully submits that the question in issue is too critical to the rights of hundreds of thousands of employees to turn upon such a flimsy semantic distinction. Rather, the UAW submits that this Honorable Court should look beyond the mere words of the policy of the Board and analyze the effect of the Board's decision in this case. Finally, the UAW submits that such an analysis would indicate, as outlined above,

that the decision in this case is in fact consistent with previous decisions of the Board and Courts and constitutes an instance of the Board properly utilizing its specialized expertise in an effort to evolve rules which implement the intent of Congress.

II.

A Sweeping Decision Which Would Exclude Hundreds of Thousands of Professional and Technical Workers From the Protections of the Act Would Be Contrary to the Labor Policies of This Country.

The labor policy of the Government of the United States, as stated within Section 1 of the Act, clearly is to encourage collective bargaining between labor and management. Furthermore, Congress has also manifested its intent that professional workers be encouraged to bargain collectively with their employers; as indicated by the specific definition of professional employees in Section 2(12) and the particular provisions in Section 9(b) respecting the organization of professionals.

Nevertheless, a sweeping decision excluding from the protections of the Act all "managerial employees" as defined prior to the decisions in *North Arkansas Electric Cooperative, Inc.*, 185 NLRB No. 83 (1970), and in this case would have an effect contrary to the stated labor policies.

More specifically, although there is no evidence before the Court which would substantiate this contention since neither professional nor technical workers are in issue, many highly specialized employees are often called upon to assist in the formulation of company policy relating to their field of specialization. Thus. a substantial proportion of these employees would

necessarily be excluded as "managerial" pursuant to the Board's previous definitions, and since collective bargaining would therefore be precluded, the labor policies of our government would be circumvented.

It should be noted that if the professional or technical employee actually formulates a major company policy which will affect employment or employment matters, the employee would properly be excluded from the protections of the Act even under the current Board policy. If, however, as is more often the case, the employee is merely providing technical information which affects the policy determination by higher "management" officials, or if the employee is merely formulating technical policy which is insignificant as far as employment matters are concerned, the employee would be improperly excluded from the protections of the Act pursuant to previous definitions of "managerial employees", and his exclusion would undermine the stated labor policies.

Perhaps the problem of the overlap between the existing (prior to *North Arkansas Electric*) definition of "managerial employees" and the ordinary work functions of professional and technical workers can best be demonstrated by comparing that definition with the statutory definition of professionals as stated in Section 2(12) of the Act. It immediately becomes apparent that there is an irreconcilable conflict in that both definitions purport to apply to employees utilizing "independent discretion".

Thus, if the "managerial employee" definition is literally applied to professionals they must be excluded because they exercise independent discretion, even though Congress specifically provided that employees

who exercise independent discretion constitute professionals and are to be accorded the protections of the Act.

Finally, the magnitude of the "managerial employee" issue in this case can best be demonstrated by quoting statistics which indicate the potential effect upon this country's labor policies which a sweeping ruling could have.

In 1947 when the Taft-Hartley amendment was enacted, "professional, technical and kindred workers" comprised a relatively small proportion of the work force, approximately 6.6 percent.[9] In comparison, non-professional/technical employees protected by the Act comprised approximately eighty (80) percent of the work force.[10]

By 1972 the change in industry's orientation from "industrial" to "technological" had resulted in a rapid increase in the proportion of professional employees to approximately 14.3 percent of the total labor force.[11] Furthermore, this growth pattern is expected to continue in the future:

> "PROFESSIONAL, TECHNICAL AND KINDRED. Employment growth in these occupations has outdistanced that in all other major occupational groups in recent decades. From less than a million in 1890, the number of these workers has grown to 10.3 million in 1968. And requirements for these occupations will continue to lead other

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[9]*Manpower Report,* 1966, page 165; reflecting figures compiled by the Bureau of Labor Statistics.

[10]*Id.* The remaining employees were agricultural and therefore statutorily excluded from the provisions of the Act.

[11]U.S. Census Bureau, *Statistical Abstract of the United States,* 1972, page 230.

> categories between 1968 and 1980, increasing half again in size, which is twice the employment increase among all occupations combined. at 15½ million in 1980, employment in this occupational group will represent 16.3 percent of total employment, up from 13.6 percent in 1968."[12]

Thus, a sweeping ruling which would affect professional and technical employees could exclude up to one-sixth of the labor force from the protections of the Act.

In conclusion, the UAW respectfully submits that such an effect on this substantial a segment of the labor force would clearly be contrary to the policies stated in the Act, and would be contrary to the underlying intent of Congress in enacting the Taft-Hartley amendment.

Conclusion.

The decision of the Court of Appeals should be reversed and the Court should grant enforcement to the order of the Board.

Respectfully submitted,

JOHN FILLION,
General Counsel, UAW,

STEPHEN SCHLOSSBERG,
General Counsel, UAW,

ABE F. LEVY,
VICTOR VAN BOURG,
CHARLES K. HACKLER,
JACK LEVINE,
Of Counsel.

LEVY, VAN BOURG & HACKLER,
Attorneys for Amicus.

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[12]U.S. Department of Labor, Bureau of Labor Statistics, *The U.S. Economy in 1980,* page 23.

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No. 72-1598

IN THE

Supreme Court of the United States

October Term, 1972

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

BELL AEROSPACE COMPANY DIVISION
OF TEXTRON INC.,
Respondent.

BRIEF FOR RESPONDENT

RICHARD E. MOOT, ESQ.,
For OHLIN, DAMON, MOREY,
SAWYER & MOOT,
Attorneys for Respondent,
1800 Liberty Bank Building,
Buffalo, New York 14202.

MASON O. DAMON,
RICHARD E. MOOT, and
JAMES N. SCHMIT,
of counsel.

BATAVIA TIMES, APPELLATE COURT PRINTERS
A. GERALD KLEPS, REPRESENTATIVE
BATAVIA, N. Y. 14020
716-343-8457

INDEX.

PAGE

Statement of the Case 1

Summary of Argument 5

Argument 7

Point I. Managerial employees are not covered by the Labor Management Relations Act 7

Point II. The National Labor Relations Board must undertake rule-making if it seeks to expand coverage under the Act to buyers such as those employed by Respondent 13

A. The buyers at Bell Aerospace Company are managerial employees 14

B. The Board must conduct a rule-making proceeding before discarding its numerous precedents which hold that buyers are managerial employees 16

Conclusion 23

Appendix A:

Supplementing Appendix A to Petitioner's Brief:

Labor Management Relations Act (29 U. S. C. Sect. 151) 24

Administrative Procedure Act (5 U. S. C. Sect. 551) 26

CITATIONS.

Cases:

ACF Industries, Inc., 145 N.L.R.B. No. 40 (1963) 14

American Locomotive Company, 92 N.L.R.B. No. 22 (1950) 9, 10, 12

Bell Aerospace Company Division of Textron Inc. vs. N.L.R.B., 475 F. 2d 485 (CA2, 1973) 1, 7, 8, 10, 13

Denton's, Inc., 83 N.L.R.B. No. 3 (1949) 11

PAGE

Eastern Camera & Photo Corp., 140 N.L.R.B. No. 58 (1963) 15
Ed's Foodland of Springfield, Inc., 159 N.L.R.B. No. 119 (1966) 15
Excelsior, 156 N.L.R.B. No. 111 20
Federal Telecommunication Laboratories, Inc., 92 N.L.R.B. No. 206 (1951) 11
Federal Telephone and Radio Company, 120 N.L.R.B. No. 207 (1958) 11
Girdler Company, 115 N.L.R.B. No. 109 (1956) 11, 15
Illinois State Journal-Register, Inc. vs. N.L.R.B., 412 F. 2d 37, 41 (7 Cir. 1969) 8
International Ladies' Garment Workers' Union vs. N.L.R.B., 339 F. 2d 116, 123 (CA2, 1964) 12
International Telephone and Telegraph Corporation, 120 N.L.R.B. No. 207, 42 LRRM 1230 (1958) 14, 15
Interstate Company, 125 N.L.R.B. No. 11 (1959) .. 11, 15
Kearney & Trecker Corp., 121 N.L.R.B. No. 107 (1958) 15
Locomotive Firemen and Enginemen, 145 N.L.R.B. No. 143 (1964) 15
Mack Trucks, Inc., 116 N.L.R.B. No. 222 (1956) 11, 15
N.L.R.B. vs. International Typographical Union, 452 F. 2d 976, 979 (CA10, 1971) 12
N.L.R.B. vs. North Arkansas Electric Cooperative, Inc., 446 F. 2d 602 (CA8, 1971) 4, 7, 9, 23
N.L.R.B. vs. Wheeling Electric Company, 444 F. 2d 783 (4th Cir. 1971) 8
N.L.R.B. vs. Wyman-Gordon Co., 394 U.S. 759 (1969) 18
Overton Markets, Inc., 142 N.L.R.B. No. 71 (1963) 15
Plankinton Packaging Co., 116 N.L.R.B. No. 160 (1956) 11, 15
Retail Clerks International Association vs. N.L.R.B., 366 F. 2d 642 (D.C. Cir. 1966) 12
Robinson-Schwenn Store, 83 N.L.R.B. No. 3 (1949).. 15
Root Dry Goods Company, Inc., 126 N.L.R.B. No. 114 (1960) 15
SEC vs. Chenery Corporation, 332 U.S. 194 (1947) 16, 17, 18
Sunnyland Packing Co., 113 N.L.R.B. No. 12 (1955) .. 11
Swift and Co., 115 N.L.R.B. No. 105 (1956) 9, 10, 12

PAGE

Temco Aircraft Corp., 121 N.L.R.B. No. 145 (1958) ..11, 15
Texaco, Inc. vs. FPC, 412 F. 2d 740, 744 (3 Cir. 1969) .. 20
Titeflex Inc., 103 N.L.R.B. No. 23 (1953) 15
W. W. Chambers Company, 124 N.L.R.B. No. 135 (1959) 11, 15
Weaver Motors, 123 N.L.R.B. No. 26 (1959) 15
Western Gear Corporation, 160 N.L.R.B. No. 25 (1966) 14
Westinghouse Electric Corporation vs. N.L.R.B., 424 F. 2d 1151 (7th Cir. 1970) 12
Wm. P. McDonald Corp., 83 N.L.R.B. No. 66 (1949) .. 11

Statutes:

Administrative Procedure Act (5 U.S.C. Sec. 551 *et seq.*):
5 U.S.C. Sec. 551 ..... 19, 26
5 U.S.C. Sec. 553 .....1, 13, 16

Labor Management Relations Act (29 U.S.C. Sec. 151 *et seq.*):
Section 1 (29 U.S.C. Sec. 151) 24
Section 8(a)1 (29 U.S.C. Sec. 158(a)1) 4, 5
Section 8(a)5 (29 U.S.C. Sec. 158(a)5) 4, 5

Miscellaneous:

Bernstein, "The NLRB's Adjudication—Rule Making Dilemma Under the Administrative Procedure Act," 79 Yale L.J. 571, at p. 594 21

Peck, The Atrophied Rule-Making Powers of the National Labor Relations Board, 70 Yale L.J. 729 20

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Respondent.

BRIEF FOR RESPONDENT

Statement of the Case

The National Labor Relations Board seeks reversal of the Second Circuit's holding that managerial employees are not covered by the Labor Management Relations Act. *Bell Aerospace Company Division of Textron Inc. vs. NLRB,* 475 F.2d 485 (CA2, 1973) at pp. 494-495. The NLRB further contends that the Second Circuit erred in holding that the appropriate manner for determining whether buyers like those at Bell are or are not managerial employees is by rule making in accordance with the Administrative Procedure Act, 5 USC Section 553. *Ibid.,* pp. 495-497.

Implicit in the NLRB's position on appeal is its recognition that Bell's buyers are managerial employees as that term has classically been construed in like cases by the Courts and the Board itself. A review of the record in the underlying representation proceeding will support no other conclusion.

Each buyer at Bell has unbridled authority to commit up to $5,000.00 of Company funds in any transaction (A 30, 31, 32, 43, 44, 48, Empl. Exh. 8 at A 33, 205). During a single 19-month period, one Senior Buyer, Mr. Charles Hopkins, committed the Company's credit in a total amount in excess of $1,350,000.00 on his own authority (A 34, Empl. Exh. 9 at A 34, 207). During the same period, the buyers as a group expended $7,671,172.00 of Company funds on purchases for which they required no further approval (A 34, Empl. Exh. 9 at A 34, 207).

Additionally, the buyers have full discretion, without any limit in dollar amount, in selecting prospective vendors (A 41, 48, 51, 161-163, 167-168), preparing invitations to bid (A 39-41, 51), evaluating bids which are submitted (A 41-43) and preparing purchase orders (A 44, 171-172, Empl. Exh. 18 at A 173). Buyers themselves execute all purchase orders up to $50,000.00 (A 30, Empl. Exh. 7 at A 33, 203). They are also fully responsible for negotiating price and terms regardless of the size of the purchase or the value of the subcontract (A 43, 48, 71-75, Empl. Exh. 11 at A 75, 210). In fact, in negotiating subcontracts worth millions of dollars, a buyer acts as chairman and chief spokesman for a Bell management team comprised of top managerial personnel representing various departments within the Company (A 44-45, 71-75, Empl. Exh. 11 at A 75, 210). In total, Bell's buyers were intimately involved in over 26,000 transactions which committed the Company to expenditures

in excess of $41,700,000.00 during a single 19 month period (Empl. Exh. 9 at A 34, 207).

Once agreement is reached, the buyer is responsible for seeing that contracts entered into are properly complied with and is continuously involved in fixing delivery dates and adjusting disputes between the supplier and Bell Aerospace Company (A 28-29, 72). As part of management, the buyer is always concerned with cost reduction (A 36, 70, 164-165, 167-168) and, on his own initiative, may change suppliers where a competitor of an established vendor shows that it can satisfy a requirement at a reduced cost (A 32, 161-163). In fulfilling these varied responsibilities, the buyers are the sole representatives of Bell Aerospace Company and, in their capacity as management representatives, are in constant communication with the vendor's highest levels of management, as well as the highest executives at Bell (A 44-45, 174, 175-178, Empl. Exh. Nos. 19, 20, 21, 22 and 23 at A 174-180, 221-233).

Notwithstanding this record, which discloses the buyers at Bell to be employing broad discretion in the exercise of a critical management function, the NLRB found Bell's buyers to constitute an appropriate unit for bargaining and directed an election. In its decision, the Board stated (Pet., App. D, p. 61):

> "In *North Arkansas Electric,* we found that, with the limitations there noted, 'managerial' employees are employees within the meaning of the Act and entitled to its protection . . . Therefore, even though, as the Employer argues, the buyers may be 'managerial' employees, we are of the view that as employees they are entitled to be represented under the Act, unless there is some cogent reason for denying such representation."

The Board felt there to be no cogent reason, "as the evidence before us fails to demonstrate that representation of the buyers would necessarily create a conflict of interest . . ."

Following election, the Board certified Amalgamated Local 1286, UAW, as collective bargaining representative of the buyers' unit. On the very day the Board's certification issued, August 12, 1971, the United States Court of Appeals for the Eighth Circuit rendered its decision in *NLRB vs. North Arkansas Electric Cooperative, Inc.*, 446 F. 2d 602 (CA8, 1971). In that decision, the Court refused to enforce an NLRB order directing that a managerial employee who had been discharged for union activities be reinstated. The Court found managerial employees to be without the coverage of the Act and, accordingly, not entitled to its protection.

Immediately upon being notified of the Eighth Circuit's decision in the *North Arkansas* case, the Company, on August 16, 1971, petitioned the Board to reconsider its decision and direction of election on the ground that the Board's determination that the buyers constituted an appropriate unit for collective bargaining purposes rested upon a decision which had been reversed by the Eighth Circuit Court of Appeals (A 278).

While its petition for reconsideration was pending before the Board, the Company declined to bargain with the Union. The Union filed a charge alleging that the Company's refusal to bargain constituted an unfair labor practice within the meaning of Sections 8(a)1 and 8(a)5 of the Labor Management Relations Act. By order dated May 1, 1972, the NLRB refused to abide by the decision of the Eighth Circuit in *NLRB vs. North Arkansas Electric Cooperative, Inc., supra*, and denied the employer's request

for reconsideration (Pet., App. E, p. 69). The Board, "with all due respect to the court" (Pet., App. E, p. 72), rejected the Eighth Circuit's interpretation of the Act's legislative history, an interpretation with which the Second Circuit has now concurred. The Board insisted that only those managerial employees "concerned with management policies in the labor relations area" (Pet., App. E, p. 73) were to be excluded from the coverage of the Act.

After denying the Company's petition for reconsideration, the NLRB, by decision and order dated May 30, 1972, found the Company to have violated Sections 8(a)1 and 8(a)5 of the LMRA (Pet., App. C, p. 47). The Second Circuit, agreeing with the Eighth Circuit's interpretation of the Act's legislative history, refused to enforce the Board's order directing the Company to bargain with the Union and the NLRB appealed to this Court.

Summary of Argument

The Respondent's position can be succinctly summarized. Managerial employees are not covered by the Labor Management Relations Act. The two Courts of Appeals which have specifically considered this question have carefully reviewed the legislative history of the Act and have come to identical conclusions. Their conclusion is consistent with the NLRB's own decisions in this area and has repeatedly been recognized by the courts.

Secondly, Bell's buyers are managerial employees and, accordingly, are without the coverage of the Act. In a line of decisions unbroken until the instant proceeding, the NLRB has uniformly found that buyers who exercise prerogatives of management in the manner and to the degree disclosed by this record are managerial employees. As managerial employees, such buyers have been excluded not

only from collective bargaining units of other employees, but from the coverage of the Act itself.

The Second Circuit's direction that the Board engage in rule-making prior to determining whether certain employees, including Bell's buyers, are or are not managerial employees is not only reasonable, but essential. The Second Circuit, while finding managerial employees to be outside the Act's coverage, did not preclude the Board from seeking to enact rules which would bring certain buyers, heretofore held to have been managerial employees, within the coverage of the Act.

That a rule-making procedure is required is evident. The Board, by decision in a single case, is seeking to broadly increase coverage under the LMRA. The Board would overturn more than a quarter of a century of precedent to the contrary and find buyers, such as those at Bell, to be "employees" within the meaning of the Act. In doing so, the Board would consider a new criteria, *i.e.* whether the buyers' position is "labor sensitive", and reject the rationale of numerous decisions which held, in effect, that buyers were a part of management.

The Board itself is unable to predict with any accuracy which employees might be included or excluded by virtue of its new "touchtone". It wishes to again undertake a case-by-case evaluation of this critical coverage question. In so doing, and by ignoring the rationale of its earlier decisions, the Board risks upsetting the fragile balance between labor and management which is the cornerstone of peaceful resolution of industrial disputes. A departure from precedent in such a fundamental area should not be undertaken on an *ad hoc* basis, without the careful consideration which the rule-making procedure would assure.

The already overcrowded calendars of the Courts and the NLRB itself hold little promise for either a prompt or an orderly redefinition of coverage under the Act. The law should remain undisturbed until the suggested expansion of coverage to a long excluded category of managerial employees, *i.e.* buyers, has been tested by the rule-making process.

ARGUMENT

POINT I

Managerial employees are not covered by the Labor Management Relations Act.

The National Labor Relations Board obstinately insists that managerial employees are covered by the Labor Management Relations Act notwithstanding the fact that two Circuit Courts have carefully considered and squarely rejected the Board's contention. Both the Second Circuit and the Eighth Circuit have painstakingly reviewed the legislative history of the Act in this regard and have concluded that managerial employees are not covered by the Labor Management Relations Act. *Bell Aerospace Company Division of Textron Inc. vs. NLRB*, 475 F. 2d 485 (CA2, 1973); *NLRB vs. North Arkansas Electric Cooperative, Inc.*, 446 F. 2d 602 (CA8, 1971).

We will not here undertake a detailed review of the relevant legislative history. Chief Judge Friendly, writing for the Court below, presented an exhaustive review of that history, together with relevant NLRB decisions both prior and subsequent to the principal Congressional enactments of 1947 and 1959. Judge Friendly concluded, at

Bell Aerospace Company vs. NLRB, supra, at p. 494 (Pet., App. A, p. 21):

> "The conclusion we reach from all of the foregoing is this: The 1947 Congress clearly believed that at least some 'managerial employees' other than 'supervisors' were excluded from the protections of the Act. In 1956 the Board concluded that the Congress had meant to exclude all true 'managerial employees.' This exclusion embraced not only an employee 'so closely related to or aligned with management as to place the employee in a position of conflict of interest between his employer on the one hand and his fellow workers on the other' but also one who is 'formulating, deter mining and effectuating his employer's policies or has discretion, independent of an employer's established policy, in the performance of his duties,' Illinois State Journal-Register, Inc. v. NLRB, 412 F.2d 37, 41 (7 Cir. 1969). Both because of what we believe to have been the understanding of the 1947 Congress and because the Board's interpretation of it had been so clearly defined for the 1959 Congress, the Board is not now free to decide the contrary. In this respect we follow the illuminating opinion of Judge Craven, dealing with a confidential secretary, in NLRB v. Wheeling Electric Co., 444 F. 2d 783 (4 Cir. 1971), and the Eighth Circuit's decision in North Arkansas Electric, *supra,* 446 F. 2d 602, although we do not agree with everything said in the latter case."

Since neither the Act itself nor the various Congressional reports published in connection with its amendment in 1947 and 1959 specifically dealt with managerial employees, both the Second and Eighth Circuits gave considerable weight to the NLRB's own decisions interpreting the Congressional amendments and their effect upon coverage for managerial employees. These decisions are totally inconsistent with the Board's newly advanced "conflict of interest test" which would exclude from the coverage of the Act only "managerial employees who are involved with

labor policy." Petitioner's brief, p. 25. Such a narrow test "improperly limits the class of employees not protected by the Act." *NLRB vs. North Arkansas Electric Cooperative, Inc., supra,* p. 610.

Of particular significance among these decisions is *American Locomotive Company,* 92 NLRB No. 22 (1950) in which the Board squarely rejected a union's contention that buyers be placed in a separate unit. The Board, at pp. 117-118, stated:

> "As it appears that the buyers are authorized to make substantial purchases for the Employer, we find that they are representatives of management, and as such may not be accorded bargaining rights under the Act."

The Board was even more explicit in *Swift & Co.,* 115 NLRB No. 105 (1956), a case in which the Board held that procurement drivers, who made purchases for the employer's account, could not be included in the production and maintenance unit and would not constitute an appropriate separate unit. The Board stated:

> "It was the clear intent of Congress to exclude from the coverage of the Act all individuals allied with management. Such individuals cannot be deemed to be employees for the purposes of the Act. Accordingly, we reaffirm the Board's position that representatives of management may not be accorded bargaining rights under the Act and deny the petitioners' alternate request."

The Board now seeks casually to dismiss these decisions, decisions upon which employers have relied for two decades, as "sweeping and inaccurate statement(s)." Petitioner's brief, p. 27. Completely disregarding *American Locomotive Company* and *Swift & Co.,* the Board surprisingly states, at p. 23 of its brief, that, "in the light of . . . the Board's past practice, the Board (in the

instant case) correctly concluded that Congress did not intend to exclude all managerial employees from the coverage of the Act, but rather left it to the Board to determine 'those managerial types who are properly to be excluded,' . . ." In its effort to unilaterally expand coverage under the Act, the Board chooses to ignore its own precedents. Of particular interest is the Board's reference, at page 27 of Petitioner's brief, "to numerous Board decisions immediately after the enactment of the 1947 amendments which held that managerial employees, not presenting a conflict of interest problem, were to be excluded from rank and file bargaining units,[16] but not from the coverage of the Act." The last clause is critical, but there is no citation of authority to support it. This omission should occasion no surprise, for so far as we can ascertain, the question was squarely presented to the Board in only two cases subsequent to 1947, *American Locomotive Company, supra* and *Swift & Co., supra*. In both cases, each involving buyers, the Board flatly held that managerial employees were not covered by the Act.

In fact, the Board is broadly misconstruing its many precedents in this area. *Swift & Co.* is not an "aberration" (Pet. brief, p. 32), but a logical outgrowth of the Board's many decisions in similar cases. *Bell Aerospace Company v. NLRB, supra*, f.n. 16 at p. 497. Contrary to its present assertion, the Board did not exclude managerial employees from bargaining units of other employees solely because they lacked community of interest. Managerial employees were excluded on the ground that they were a part of management. This was especially true in cases involving buyers. The Board repeatedly excluded such employees for the reason that, in committing the employer's credit, buyers were engaged in a function

unique to management and, accordingly, were a part thereof.[1]

These cases belie the Board's present contention that managerial employees, even though excluded from other employee units, are covered by the Act as long as they are not engaged in labor relations. The Board refuses to

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[1] See, for example, *Interstate Company,* 125 NLRB No. 11 (1959) ("In accordance with customary Board policy, we will exclude these employees as managerial employees because of their buying function."); *W. W. Chambers Company,* 124 NLRB No. 135 (1959) ("The buyer spends about 60% of her time in buying supplies for the employer . . . By virtue of her purchasing activities . . . this employee effectively exercises a prerogative of, and is a representative of management. We therefore find that the interests of the buyer are allied with those of managment. Accordingly, we shall exclude her . . ."); *Temco Aircraft Corp.,* 121 NLRB No. 145 (1958) ("Buyer A: This employee purchases materials for the company and is often required to pledge the company's credit. We find that Buyer A is managerial, and exclude him from the unit."); *Federal Telephone and Radio Company,* 120 NLRB No. 207 (1958) (". . . we find that buyers . . . exercise a prerogative of management . . . that their interests are allied with management and exclude them . . ."); *Mack Trucks, Inc.,* 116 NLRB No. 222 (1956) ("We find that the buyers and assistant buyers are managerial employees and shall exclude them."); *Plankinton Packaging Co.,* 116 NLRB No. 160 (1956) (". . . [he] (employee who made purchases for employer's account) exercises a prerogative of, and [is a] representative of management . . . [his] interests are allied with management and [we] exclude [him] from the appropriate units."); *Girdler Company,* 115 NLRB No. 109 (1956) ("We find . . . that the buyers are managerial employees whom we shall exclude . . ."); *Sunnyland Packing Co.,* 113 NLRB No. 12 (1955) (". . . the interests of both these employees [beef buyers] are clearly associated with management. We shall, in accord with our usual practice, exclude them . . ."); *Federal Telecommunication Laboratories, Inc.,* 92 NLRB No. 206 (1951) (". . . in accordance with our established policy, [we shall] exclude them from the unit as managerial employees who have the authority to pledge the company's credit in making purchases."); *Wm. P. McDonald Corp.,* 83 NLRB No. 66 (1949) (". . . his interests are closely connected with those of management. Accordingly, we shall exclude the fruit buyer . . ."); *Denton's Inc.,* 83 NLRB No. 3 (1949) (". . . the interests of the buyers . . . are more closely identified with management than with the other employees . . . in accordance with our policy . . . we shall exclude all buyers . . .").

analyze the rationale of its own decisions. As stated by Chief Justice (then Circuit Judge) Burger in *Retail Clerks International Association vs. NLRB,* 366 F. 2d 642 (CADC, 1966), at p. 645:

> "The Board . . . excludes from the protection of the Act . . . managerial employees . . . The rationale for this Board policy, though unarticulated, seems to be the reasonable belief that Congress intended to exclude from the protection of the Act those who comprised a part of 'management' or were allied with it on the theory that they were the one from whom the workers needed protection."

There is no basis for the Board's novel position that only those involved in the formulation of labor relations policies are to be excluded on this ground. Countless employees are part of management, *i.e.* managerial employees, who have no direct involvement in labor relations matters. This fact is underscored by the many cases involving buyers which are cited in footnote 1. Most significantly, the Circuit Courts have consistently understood the Board's policy in this area to mean that employees allied with management, such as buyers, are *excluded* from the protection of the Act. See, for example, *NLRB vs. International Typographical Union,* 452 F. 2d 976, 979 (CA10, 1971); *Westinghouse Electric Corporation vs. NLRB,* 424 F. 2d 1151, 1158 (CA7, 1970); *Retail Clerks International Association vs. NLRB, supra;* and *International Ladies' Garment Workers' Union vs. NLRB,* 339 F. 2d 116, 123 (CA2, 1964). These decisions, each recognizing that managerial employees are excluded from the coverage of the Act, are consistent with the Board's own decisions on this specific question. *American Locomotive Company, supra; Swift & Co., supra.*

Notwithstanding the numerous court and Board precedents to the contrary, including decisions by two Circuit

Courts which exhaustively reviewed relevant legislative history and found Congress' intent to be otherwise, the NLRB insists that managerial employees are within the coverage of the Labor Management Relations Act. The Board is wrong. The decision of the Second Circuit is well supported by the legislative history of the Act and by numerous Court and Board decisions. It should be affirmed.

POINT II

The National Labor Relations Board must undertake rule-making if it seeks to expand coverage under the Act to buyers such as those employed by Respondent.

Having rejected as erroneous the Board's holding "that it was free to regard *all* managerial employees as covered by the Act unless their duties met the 'fundamental touchstone' of including 'determinations which should be made free of any conflict of interest which could arise if the person involved was a participating of a labor organization' . . .,"[2] the Second Circuit held that the NLRB could find buyers not to be managerial employees only through the promulgation of a rule in accordance with the Administrative Procedure Act.[3] The Second Circuit recognized that buyers like those at Bell had traditionally been classified as managerial employees and stated, at pp. 496-497 of its opinion, that "the argument for rule-making is especially strong when the Board is proposing to reverse a longstanding and oft-repeated policy on which industry and labor have relied."

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[2] *Bell Aerospace Company vs. NLRB, supra,* at pp. 494-495.

[3] 5 U. S. C. Sec. 553.

A. The buyers at Bell Aerospace Company are managerial employees.

The Court below felt that the Board, in a proper proceeding, might find that Bell's buyers are not managerial employees. It insisted, of course, that such a determination could only be made through rule-making. The Court's reasoning was partially predicated upon the fact that the Board, in numerous decisions, had repeatedly found buyers exercising similar responsibilities to be a part of management.

This line of authority, upon which Respondent relied, must be emphasized. The consistency of these decisions underscores the significant departure from established law which the Board seeks to accomplish in an adjudicatory proceeding. The relevant facts are set forth in Respondent's statement of the case. None of these facts are disputed. It can not be seriously maintained that such activity and responsibilities are not managerial. The Bell Buyers, acting in this undisputed capacity, formulate, determine and effectuate the Company's procurement policy. In such capacity, they are clearly allied with management and, as managerial employees, have traditionally been excluded from coverage under the Act.

In a line of decisions unbroken until the instant proceeding, the National Labor Relations Board has uniformly found that buyers who exercise prerogatives of management in the manner and to the degree disclosed by this record are managerial employees. See, for example, *Western Gear Corporation*, 160 NLRB No. 25 (1966), buyers had discretionary authority to pledge the employer's credit up to $5,000 and prepared purchase orders; *ACF Industries, Inc.*, 145 NLRB No. 40 (1963), buyers could commit employer's credit in amounts up to $2500.00 and had authority to reject bids; *International Telephone and Tele-*

graph Corporation, 120 NLRB No. 207 (1958), buyers exercised prerogative of management in making purchases in amounts up to $2500.00 without prior approval; *Girdler Company,* 115 NLRB No. 109 (1956), buyers had final authority to commit employer's credit in amounts up to $2,000; *Mack Trucks, Inc.,* 116 NLRB No. 222 (1956), buyers during a single fiscal year pledged employer's credit in amounts ranging from $800,000.00 to $6,000,000.00, negotiated prices, changed delivery dates and adjusted disputes with suppliers; *Locomotive Firemen and Enginemen,* 145 NLRB No. 143 (1964), clerk annually purchased supplies valued from $60,000 to $100,000 without higher approval; and *Kearney & Trecker Corp.,* 121 NLRB No. 107 (1958), buyers interview prospective suppliers, and cancel orders and place them with alternate vendors. In addition to the foregoing, Buyers have been found by the NLRB to be managerial employees, principally because of their ability to commit the employer's credit, in numerous other decisions.[4]

Under the weight of these authorities and the undisputed facts, there can be no question that Bell's buyers are managerial employees as that term has repeatedly been defined in similar cases. In fact, the Board has conceded as much throughout these proceedings. The Court below, at f.n. 6 on p. 487, was of the opinion that four of the five members of the Board considered Bell's buyers to be managerial employees.

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[4] *Ed's Foodland of Springfield, Inc.,* 159 NLRB No. 119 (1966); *Overton Markets, Inc.,* 142 NLRB No. 71 (1963); *Eastern Camera & Photo Corp.,* 140 NLRB No. 58 (1963); *Root Dry Goods Company, Inc.,* 126 NLRB No. 114 (1960); *Interstate Company,* 125 NLRB No. 11 (1959); *W. W. Chambers Company,* 124 NLRB No. 135 (1959); *Weaver Motors,* 123 NLRB No. 26 (1959); *Temco Aircraft Corp.,* 121 NLRB No. 145 (1958); *Plankinton Packaging Co.,* 116 NLRB No. 160 (1956); *Titeflex Inc.,* 103 NLRB No. 23 (1953); and *Robinson-Schwenn Store,* 83 NLRB No. 3 (1949).

B. The Board must conduct a rule-making proceeding before discarding its numerous precedents which hold that buyers are managerial employees.

The Board is incorrect in its analysis of prior decisions by this Court dealing with rule-making by administrative agencies. The holding of the Second Circuit is consistent with the enunciated principles governing this issue and, in requiring the Board to undertake rule-making,[5] the Court has mandated the only administrative procedure appropriate in these circumstances.

Petitioner chooses to ignore the affirmative thrust of this Court's holding in *SEC vs. Chenery Corporation*, 332 U. S. 194 (1947). At p. 202 of its opinion, the Court stated:

> "Since the Commission, unlike a court, does have the ability to make new law prospectively through the exercise of its rule-making powers, it has less reason to rely upon *ad hoc* adjudication to formulate new standards of conduct within the framework of the Holding Company Act. The function of filling in the interstices of the Act should be performed, as much as possible, through this quasi-legislative promulgation of rules to be applied in the future."

There can be little question that the Court considered rule-making to be the preferable procedure for an agency to utilize in "filling in the interstices of . . . (an) Act." The court did not attempt to precisely delineate those circumstances which required rule-making. It did, however, clearly indicate those instances in which it felt resolution by adjudication to be appropriate. As outlined by the Court, at pp. 202-203:

> "In other words, problems may arise in a case which the administrative agency could not reasonably foresee, problems which must be solved despite the ab-

[5] 5 U. S. C. Sec. 553.

> sence of a relevant general rule. Or the agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule. Or the problem may be so specialized and varying in nature as to be impossible of capture within the boundaries of a general rule. In those situations, the agency must retain power to deal with the problems on a case-to-case basis if the administrative process is to be effective."

We suggest that it was the Court's clear intent that where none of the aforementioned alternatives were present, the agency was to proceed by rule-making. In fact, the Court sanctioned adjudication in *Chenery* precisely because the agency was confronted by a novel situation with which it had to deal. *Ibid.*, p. 203.

In the instant case, the circumstances satisfy none of the criteria set down in *Chenery*. The classification of buyers as managerial employees, and their resultant exclusion from coverage under the Act, is not a problem which the NLRB could not reasonably foresee. It is a fundamental issue that has arisen in numerous representation cases. Nor can the Board be heard to say that it lacked sufficient experience with the issue to warrant finalization into a formal rule. As the many Board decisions cited in Point I demonstrate, the NLRB has, on numerous occasions, analyzed the functions of buyers and has consistently found them to be a part of management. Similarly, the problem is not so specialized "as to be impossible of capture into a general rule." In fact, the Board's numerous precedents for more than a quarter of a century have distilled into a rule relied upon by both labor and management—buyers, as managerial employees, are excluded from the coverage of the Act. It is precisely this fact which makes the Board's present, unilateral effort to drastically alter coverage under the Act so inappropriate.

The Board chooses to emphasize those passages in *Chenery* which suggest that "any rigid requirement" regarding rule-making should be avoided and that the choice between proceeding by rule-making or adjudication "lies primarily in the informed discretion of the . . . agency." The Second Circuit, however, is not advancing a rigid requirement. It is holding that in these particular circumstances, which include the Board's rejection of well-established precedents affecting thousands of employees and employers, the Board should comply with the affirmative mandate of *Chenery* and undertake rule-making. Furthermore, we submit that the emphasis in the last quoted clause must be placed on the word "primarily". Its clear implication is that the choice is not exclusively that of the agency, but that the court can and should act where an agency abuses its discretion and insists upon formulating basic rules in complete disregard of the Administrative Procedure Act.

Of particular significance in the instant proceeding, is this Court's decision in *NLRB vs. Wyman-Gordon Co.*, 394 U.S. 759 (1969). The Board, at p. 30 of its brief, totally misconstrues the holding of that case with respect to the NLRB's obligation to undertake rule-making. Although four opinions were written, it is clear that six Justices concurred in the proposition that the NLRB must undertake rule-making when seeking to promulgate a general policy which will have a widespread, prospective effect.

Mr. Justice Fortas, writing for a plurality of four, criticized the NLRB's promulgation by adjudication of a general rule requiring an employer to furnish a list of employees prior to a representation election, and stated, at p. 764:

> "The rule-making provisions of that Act, which the Board would avoid, were designed to assure fairness and mature consideration of rules of general application. . . . They may not be avoided by the process of making rules in the course of adjudicatory proceedings."

Mr. Justice Harlan, in a dissenting opinion, noted that "an agency is not adjudicating when it is making a rule, which the Act defines as 'an agency statement of general or particular applicability and *future affect* . . .' 5 U.S.C. Sec. 551(4)." He went on to conclude, at p. 781:

> "Either the rule-making provisions are to be enforced or they are not. Before the Board may be permitted to adopt a rule that so significantly alters pre-existing labor-management understandings, it must be required to conduct a satisfactory rule-making proceeding, so that it will have the benefit of wide-ranging argument before it enacts its proposed solution to an important problem."

Mr. Justice Black, also dissenting, endorsed Justice Harlan's comments, and went on to say, at pp. 777-779:

> "The rule-making procedure performs important functions. It gives notice to an entire segment of society of those controls or regimentation that is forthcoming. It gives an opportunity for persons affected to be heard. . . .
>
> "Agencies discover that they are not always repositories of ultimate wisdom; they learn from the suggestions of outsiders and often benefit from that advice. . . .
>
> "I woud hold the agencies governed by the rule-making procedure strictly to its requirements and not allow them to play fast and loose as the National Labor Relations Board apparently likes to do.[2]" (footnote omitted)

To paraphrase Judge Friendly, if the above excerpts, which reflect the opinion of six Justices that the NLRB must engage in rule-making when promulgating a policy

of general impact, have any meaning, they must require the Board to perform its quasi-legislative function before it can unilaterally decree that thousands of buyers are not managerial employees and, accordingly, are covered by the Labor Management Relations Act. As succinctly put by the court below, at pp. 496-497:

> "The Board was prescribing a new policy, not just with respect to 25 buyers in Wheatfield, N.Y., but in substance, to use Mr. Justice Douglas' phrase, 'to fit all cases at all times.' 394 U.S. at 777, 89 S.Ct. at 1435. There must be tens of thousands of manufacturing, wholesale and retail units which employ buyers, and hundreds of thousands of the latter. Yet the Board did not even attempt to inform industry and labor organizations, by means providing some notice though not in conformity with section 4, of its proposed new policy and to invite comment thereon, as it has sometimes done in the past, see Peck, The Atrophied Rule-Making Powers of the National Labor Relations Board, 70 Yale L.J. 729, 756-757 (1961) and did in *Excelsior*, 156 N.L.R.B. at 1238, without thereby satisfying the Supreme Court, 394 U.S. at 764, 89 S.Ct. 1426. Although policy making by adjudication often cannot be avoided in unfair labor practice cases, since the parties have already acted and the Board must decide one way or the other, there is no such problem in a representation case.[15] . . . The point rather is that when the Board has so long been committed to a position, it should be particularly sure that it has all available information before adopting another, in a setting where nothing stands in the way of a rule-making proceeding except the Board's congenital disinclination to follow a procedure which, as said in Texaco, Inc. v. FPC, 412 F.2d 740, 744 (3 Cir. 1969), 'enables the agency promulgating the rule to educate itself before establishing rules and procedures which have a substantial impact on those regulated,' despite the Court's pointed admonitions.[16]" (footnotes omitted)

In addition to those points so well made by Judge Friendly, there is a pragmatic aspect to this matter which can-

not be ignored. At a time when the NLRB's case load is continuously increasing, with lengthy delays between the filing of a petition and final determination at the agency level, the NLRB could upset an unbroken line of decisions holding buyers to be managerial employees, introduce a new criteria for determining coverage under the Act, and commence an exhaustive case-by-case determination as to which employees are or are not covered.

There is no question that this is the course being charted. In its brief, at p. 32, the Board does not challenge the fact that there "must be tens of thousands of . . . units which employ buyers, and hundreds of thousands of the latter." Rather, it argues that a determination as to whether the hundreds of thousands of buyers are or are not covered by The Act should be made on a case-by-case basis. To quote a noted commentator in this area, the Board's decision in this case is a classic example of "adjudications which do not develop clear criteria but stress doctrinal subtlety and fasten upon fact distinctions, as the Board cases so often do, (and) probably *encourage* litigation."[6]

That the new rule requiring potential conflict will encourage litigation is underscored in the Board's own decision denying Respondent's motion for reconsideration in this case (Pet. App. E, p. 69). In speculating as to the affect of its newly enunciated rule, the Board states, at pp. 73-74:

> "And it may be that other than purely labor relations managerial employees should unquestionably be excluded because of their responsibility with respect to policies which are inextricably intertwined and of necessity affect or impinge upon the labor relations area."

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[6] Bernstein, "The NLRB's Adjudication-Rule Making Dilemma Under the Administrative Procedure Act," 79 Yale L. J. 571, at p. 594.

and further

"For instance, a corporate representative, charged with the duty of determining where an employers' plants should be located or what capital expenditures a corporation ought to make, may well have such broad managerial discretion as to necessarily involve a determination of matters affecting employment and employment policies that he should be excluded from coverage."

and further

"It may be that his decisions inevitably will encompass the field of labor relations even though corporate organization charts may not on their face classify him as charged directly with labor relations policy making."

and further

"A like analysis might also dictate the exclusion of those bearing primary responsibility for determination of finanical policies, or even those charged with the direction of basic policies in the field of research and development."

and further

"We make no attempt to list in detail all those managerial types who ought properly to be excluded. Nor did we in North Arkansas, where the only relevant consideration was the employee's lack of authority with respect to labor relations matters."

Can there by any question as to the impact of this "doctrinal subtlety" upon the over-crowded calendars of both the NLRB and the Circuit Courts? How are employers, or for that matter unions, to guess as to which employees are or are not covered by the Act?

The Board contends that the number of individuals involved militates against rule-making. To the contrary, the vast impact of this rule demands that rule-making be undertaken. Is the Board seriously contending that it is incapable of developing criteria which would definitively resolve the issue for the vast majority of buyers? If it is, the

NLRB has sadly failed in its purpose. No doubt there will be cases which cannot be disposed of by reference to a general rule. But these will be far fewer than those which will be commenced if there is no rule at all.

Finally, this appears to be an area in which the Board could very much benefit from industry input. The NLRB has failed to consider that portion of the decision in *NLRB vs. North Arkansas Electric Cooperative, supra,* in which the court, after reviewing the stated legislative purpose of the Labor Management Relations Act,[7] reminded the Board that the Act was intended to protect "workers" as opposed to individuals who are clearly aligned with management. That the latter should be excluded only where they are in labor sensitive positions is far too narrow. The Board may well learn that it is in the best interest of both employers and unions to exclude from collective bargaining units those persons, like buyers, who are an admitted part of management.

CONCLUSION

The judgment of the Court below should be affirmed.

Respectfully submitted,

OHLIN, DAMON, MOREY, SAWYER
& MOOT,
Attorneys for Respondent,
1800 Liberty Bank Building,
Buffalo, New York 14202.

MASON O. DAMON,
RICHARD E. MOOT, and
JAMES N. SCHMIT,
of counsel.

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[7] 29 U. S. C. Sec. 151.

APPENDIX A

Supplementing Appendix A to Petitioner's Brief

Labor Management Relations Act
(29 U. S. C. Sect. 151)

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FINDINGS AND POLICIES

SECTION 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Labor Management Relations Act (29 U. S. C. Sect. 151)

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

• • •

Administrative Procedure Act (5 U. S. C. Sect. 551)

§ 551. DEFINITIONS.

• • •

(4) "rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;

• • •

SUPREME COURT, U. S.

DEC 29 1973

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973.

No. 72-1598

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

BELL AEROSPACE COMPANY DIVISION OF TEXTRON, INC.,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA FOR LEAVE TO FILE BRIEF AMICUS CURIAE

and

BRIEF AMICUS CURIAE IN SUPPORT OF THE RESPONDENT.

MILTON SMITH,
General Counsel,

RICHARD B. BERMAN,
Chamber of Commerce of the
United States of America,
1615 H Street, N. W.,
Washington, D. C. 20006,

GERARD C. SMETANA,
925 South Homan Avenue,
Chicago, Illinois 60607,

JERRY KRONENBERG,
HOWARD MOCERF,
BOROVSKY, EHRLICH & KRONENBERG,
120 South LaSalle Street,
Chicago, Illinois 60603,
Attorneys for the Amicus Curiae.

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MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA FOR LEAVE TO FILE BRIEF AMICUS CURIAE.

The Chamber of Commerce of the United States of America (herein the "Chamber") respectfully moves this Court for leave to file a brief *amicus curiae* in support of the position urged herein by the respondent, Bell Aerospace Company Division of Textron, Inc. In support whereof, the following is shown:

1. The Chamber is a federation consisting of a membership of over 3,700 state and local chambers of commerce and trade and professional associations, a direct business membership in

TABLE OF CONTENTS.

	PAGE
Interest of the Amicus	1
Summary of Argument	2
Argument	4
I. Managerial Personnel Are Not Covered by the National Labor Relations Act; the Board's Contention That Such Personnel Are "Employees", Entitled to the Right of Self-Organization Conferred Therein Is Contrary to the Basic Policies and Purposes of the Act	4
A. Board Policy Prior to the Taft-Hartley Amendments	5
B. The Taft-Hartley Amendments	10
C. Board Policy Subsequent to the Taft-Hartley Amendments	15
D. The Board May Not Reinterpret the Act to Suit a Change in the Policy Without Sound Basis for That Change; the Board Has Shown No Such Basis Here	20
E. The Buyers Involved in the Instant Case Qualify for Exclusion as "Managerial" Employees	23
II. The Lower Court's Holding That the Instant Case Must Be Remanded for Rule-Making Proceedings Is in Error and Must Be Reversed	24
Conclusion	30

TABLE OF AUTHORITIES.

Cases.

American Locomotive Co., 92 NLRB 115 (1950) 16, 23
Atlantic Greyhound Corp., 7 NLRB 1189 (1938) 7
Barret Division, Allied Chemical & Dye Corp., 65 NLRB 903 (1946) 6
Denton's, Inc., 83 NLRB 35 (1949) 16
Denver Dry Goods Co., 74 NLRB 1167 (1947) 16
DIT-MCO, Inc., 163 NLRB 1019, enf'd 470 F. 2d 305 (CA 6, 1973) 21, 22
Dravo Corp., 54 NLRB 1174 (1944) 7
Electric Controller & Manufacturing Co., 69 NLRB 1242 (1946) 6
Excelsior Underwear, Inc., 156 NLRB 1236 (1966) .. 26, 28, 29
Fibre-Board Paper Products Corp. v. NLRB, 379 U. S. 203 (1964) 14
Ford Motor Company, 66 NLRB 1317 (1946) .. 8, 9, 10, 15, 17
Haberman v. Finch, 418 F. 2d 664 (CA 2, 1969) 12
Hudson Motor Car Co., 55 NLRB 509 (1944) 6, 9, 17
Illinois State Journal Register, Inc. v. N. L. R. B., 412 F. 2d 37 (CA 7, 1969) 19
International Ladies' Garment Workers Union v. N. L. R. B., 339 F. 2d 116 (CA 2, 1964) 19
Julian P. Friez & Sons, 47 NLRB 43 (1943) 6, 9
Lobue Bros., 109 NLRB 1182 (1954) 21
Maryland Drydock Co., 49 NLRB 733 (1943) 11
Mobil Oil Corp. v. N. L. R. B., 482 F. 2d 842 (CA 7, 1973) 21, 27

N. L. R. B. v. A. J. Tower, 329 U. S. 324 (1945) 22
N. L. R. B. v. Gissel Packing Co., 395 U. S. 575 (1969) .. 27
N. L. R. B. v. North Arkansas Electric Cooperative, Inc., 446 F. 2d 602 (CA 8, 1971) 8, 13, 18
N. L. R. B. v. Quality Manufacturing Co., 481 F. 2d 1018 (CA 4, 1973) 20, 21, 27
N. L. R. B. v. Savair Manufacturing Co., ... U. S. ....., Daily Labor Report No. 242 (BNA, Dec. 17, 1973) ... .21, 22, 27
N. L. R. B. v. Waterman S. S. Co., 309 U. S. 326..... 22
N. L. R. B. v. Wheeling Electric Co., 44 F. 2d 783 (CA 4, 1971) 7, 8, 12, 18
N. L. R. B. v. Wyman-Gordon Co., 294 U. S. 759 (1964) 3
N. L. R. B. v. Wyman-Gordon Co., 394 U. S. 759 (1969) 22, 26, 28, 29
Packard Motor Car Co. v. N. L. R. B., 330 U. S. 485 (1947) 11, 12, 13
Packard Motor Co., 64 NLRB 1212 (1945)..... 11
Palace Laundry Dry Cleaning Corp., 75 NLRB 320 (1947) 15, 18
Pittsburg Plate Glass Co. v. N. L. R. B., 427 F. 2d 936 (CA 6, 1970) 12
Quality Manufacturing Co., 195 NLRB No. 42 (1972).. 20
Retail Clerks International Association v. N. L. R. B., 336 F. 2d 642 (CA DC, 1966) 19
Rex Mfg. Co., Inc., 7 NLRB 95 (1938)..... 6
S. E. C. v. Chenery Corp., 318 U. S. 80 (1943)..... 25
S. E. C. v. Chenery Corp., 332 U. S. 194 (1947).....26, 27
Spicer Mfg. Corp., 55 NLRB 1491 (1944).....6, 9, 17, 23
Swift & Co., 115 NLRB 752 (1956).....16, 17, 18, 23

Union Colleries Coal Co., 41 NLRB 961 (1942)..... 11

Vulcan Corp., 58 NLRB 733 (1944) 6, 9

Westinghouse Air Brake Co., 64 NLRB 547 (1945).... 6

Westinghouse Electric Corporation v. N. L. R. B., 424 F. 2d 1151 (CA 7, 1970) 19, 20

Yale & Towne Mfg. Co., 60 NLRB 626 (1945).....8, 16, 17

Statutes.

National Labor Relations Act (Wagner Act, 49 Stat. 449, 450) 29 U. S. C. 151, 152
Section 2(3) 11

National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519) 29 U. S. C. 141, 151 *et seq.*
Section 1 13
Section 8(a)(1) 20
Section 9 21

Administrative Procedures Act,
Section 4 (5 U. S. C. 553) 24

Miscellaneous.

H. R. Rep. No. 245, 80th Cong., 1st Sess. 13-14, 17 (1947) 11

S. Rep. No. 105, 80th Cong., 1st Sess. 3-5 (1947)..... 11

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BRIEF AMICUS CURIAE IN SUPPORT OF THE RESPONDENT.

INTEREST OF THE AMICUS CURIAE.

The interest of the Chamber of Commerce of the United States of America is set forth in the foregoing Motion for Leave to File a Brief *Amicus Curiae* herein.

SUMMARY OF ARGUMENT.

I.

Prior to the enactment of the Taft-Hartley amendments, the National Labor Relations Board's policy was to exclude "managerial" employees from the statutory right to organize under the National Labor Relations Act. This practice was one of total exclusion, for the Board never granted personnel it found to be "managerial" the statutory right to engage in collective bargaining with their employer. Moreover, this exclusionary practice was not limited only to those managerial personnel who were involved in the formulation of their employer's labor relations policies, but extended to those involved in purely business and commercial matters as well.

During the same period, however, the Board allowed foremen and supervisors to form unions and collectively bargain with their employer. Congress found that this practice was contrary to the policies of the Act, and in 1947, amended the Act to exclude "supervisors" from its protection. However, Congress had no reason to quarrel with the Board's described practice of excluding other managerial personnel because that practice comported with the policy and principle of maintaining and preserving within the Act management's legitimate right to manage.

After the Taft-Hartley amendments, the Board continued to exclude *all* "managerial" employees from the Act's coverage holding that such exclusion was consistent with the will of Congress. In the instant case, however, the Board has taken the position that managerial personnel are not excluded from the Act's coverage unless their duties might involve a conflict of interest between their obligation to the employer and their loyalty to the bargaining unit and that this conflict can only

arise if the persons at issue are involved in labor relations or personnel matters. According to the Board's view, all other managerial personnel are included within the Act's coverage.

The Board's new and revised position is contrary to its own past practice, Congressional intent and sound principles of labor-management relations pursuant to which persons charged with the creation and effectuation of management policies, whether labor relations oriented or not, must have a sole, undivided allegiance to management.

II.

Although the Board enunciated a new and erroneous policy with respect to its treatment of "managerial" employees in this matter, it was not precluded from doing so in an adjudicatory proceeding, rather than through rule-making hearings, as the court below concluded. Rule-making is not the most appropriate procedure for resolving the issue herein because any rule that might result would be incapable of dealing with the multitude of factual situations in which the issue might present itself. That is, rule-making would result in no substantial judicial or administrative economy. *Ad hoc* litigation is the satisfactory way of resolving such an issue.

Moreover, this case is governed by *N. L. R. B.* v. *Wyman-Gordon Co.*, 394 U. S. 759 (1964) wherein this Court held that the Board was not precluded from formulating a rule in an adjudicatory proceeding so long as the Board applied the rule to the parties to that proceeding and not just prospectively. The rule enunciated in this case, however erroneous, was formulated in an adjudicatory proceeding affecting the parties to this proceeding.

ARGUMENT.

I.

MANAGERIAL PERSONNEL ARE NOT COVERED BY THE NATIONAL LABOR RELATIONS ACT; THE BOARD'S CONTENTION THAT SUCH PERSONNEL ARE "EMPLOYEES", ENTITLED TO THE RIGHT OF SELF-ORGANIZATION CONFERRED THEREIN IS CONTRARY TO THE BASIC POLICIES AND PURPOSES OF THE ACT.

In this case[1] the Board determined that buyers employed by Bell Aerospace Company, Division of Textron, Inc., constituted a unit appropriate for collective bargaining purposes and, upon petition by a union, were subject to the Board's procedures. While the Board did not disagree that the buyers in question might well be "managerial" employees, it nevertheless concluded that managerial personnel were "employees" covered by the Act. The rule enunciated and applied by the Board was that "managerial" employees are so covered by the Act unless their duties and responsibilities "include determinations which should be made free of any conflict of interest which could arise if the person involved was a participating member of a labor organization." The Board found no such conflict herein and ordered the Employer to bargain with the labor organization representing the unit of buyers.

The Court of Appeals for the Second Circuit denied enforcement of the Board's order.[2] The Court concluded that all true "managerial" employees were excluded from coverage by the

1. The Board's order in the underlying representation case is reported at 190 NLRB No. 66 (1970); its Order denying reconsideration is reported at 196 NLRB No. 127 (1972); and its Decision and Order putting into issue the question here under consideration is reported at 197 NLRB No. 30 (1972).

2. 475 F. 2d 485 (CA 2, 1973).

Act, and found that the exclusion was not limited to the "conflict of interest" test as contended by the Board, but embraced any person who is involved in "formulating, determining and effectuating his employers' policies or has discretion, independent of an employer's established policy, in the performance of his duties."

The issue which thus separates the Board from the Second Circuit relates to the kind of managerial personnel exempt from the Act. In satisfaction of its own test, the Board would exclude only those who formulate or effectuate their employer's labor or employment policies; the court would additionally exclude those who act for their employer in purely business respects unrelated to matters of labor policy or labor relations, such as the buyers involved herein.

Analysis of the history of the Board's own policy with respect to managerial personnel reveals the error the rule enunciated by the Board in this matter. That history reveals that, until this instant case, the Board has never accorded "managerial" employees bargaining rights under the Act, and nothing that Congress has said remotely suggests approval of the Board's present interpretation of its policy.

A. Board Policy Prior to the Taft-Hartley Amendments.

Though the Wagner Act nowhere contains the term "managerial employee", the Board, as a matter of policy, has consistently excluded personnel it found to be within that category from coverage under the statute. Moreover, the Board excluded such personnel because their duties encompassed formulation, determination and effectuation of their employers' policies or because they had independent discretion in the performance of their duties. The exclusion was not restricted to only those who formulated or enforced labor or personnel policies.

As observed by the Court below, the concept of "managerial employee" first arose in the context of cases in which either the

employer or the union argued that certain personnel should be excluded from proposed larger bargaining units because, as a result of their duties, those persons were in a close relationship with management. Thus, for example, in *Julian P. Friez & Sons*, 47 NLRB 43 (1943), the Board excluded from a unit of production and maintenance employees, personnel charged with expediting the completion of orders and assuring adherence to production time schedules because they were "closely related to management".

In *Spicer Mfg. Corp.*, 55 NLRB 1491 (1944), expeditors who contacted vendors, placed orders, kept records of the progress of deliveries and had authority to reassign orders, were excluded from a unit of office clerical, technical and professional employees because "the authority possessed by these employees to exercise their discretion in making commitments on behalf of the Company stamps them as managerial.[3] Buyers such as those involved herein were similarly excluded from the statutorily-recognized right of self-organization. Thus, in *Hudson Motor Car Co.*, 55 NLRB 509 (1944) buyers were excluded from a clerical unit since they purchased "all materials required by the Company and were, therefore, 'closely allied to management.' "

Similarly, in *Vulcan Corp.*, 58 NLRB 733 (1944) a buyer was excluded from a production and maintenance unit because the responsibility of his position placed him within the "managerial" category.[4]

Analysis of the Board's practice under the Wagner Act thus reveals that the Board excluded personnel from the rights of Union representation because their duties and responsibilities categorized them as "managerial", and that the exclusionary practice was not restricted only to those who had responsibilities in the area of labor relations.

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3. See, also, *Rex Mfg. Co., Inc.*, 7 NLRB 95 (1938); *Westinghouse Air Brake Co.*, 64 NLRB 547 (1945); *Electric Controller & Manufacturing Co.*, 69 NLRB 1242 (1946).

4. See, also, *Barrett Division, Allied Chemical & Dye Corp.*, 65 NLRB 903 (1946).

The Board now views its early practice differently. It contends that it never excluded "managerial employees" from the Act's coverage. Rather, it is argued, such personnel were only excluded from joining rank and file bargaining units either because they did not share a sufficient "community of interest" with the rank and file or because they had confidential relationship with the employer in matters concerning labor relations. These arguments are novel and constitute an attempt to retroactively restructure a "policy" to conform to its current view. There arguments do not withstand analysis.

The Board's first argument—that from the inception of the Act "managerial employees" were not excluded from the Act's coverage but were merely excluded from rank and file units because they lacked a sufficient community of interest with larger groups—is based upon occasional implication and dicta contained in a few cases that such personnel might still be "employees" within the meaning of the Act,[5] and is without merit.

The Board has never found a unit of managerial personnel appropriate. It can hardly be maintained that the failure in practice to find that such personnel are entitled to Union representation constitutes a policy requiring approval of the Board's present view. In *N. L. R. B.* v. *Wheeling Electric Co.*, 444 F. 2d 783 (CA 4, 1971), the Board maintained that "confidential" employees were entitled to the Act's protection. There, as here, the Board argued that its policy was merely to exclude the personnel in issue from rank and file bargaining units, but that such personnel were still "employees". The Court observed that although the Board had, in earlier cases, implied that confidential employees might be covered by the Act, the Board had never certified a bargaining unit made up entirely of them. In response to the Board's contention, the Court stated:

5. See *Atlantic Greyhound Corp.*, 7 NLRB 1189 (1938); and *Dravo Corp.*, 54 NLRB 1174 (1944), where the Board specifically stated that it was not considering the relationship between the excluded expediters and buyers and management in making its decision. The reference to the existence of their rights to self-organization under the Act was pure dictum.

> "Simply saying, as the Board does, that confidential employees have always been given the right to self-organization in spite of their exclusion from bargaining units does not answer the question." *Id.*, at 786.

Moreover, the same argument was urged on the Court of Appeals for the Eighth Circuit with respect to "managerial employees" and similarly was rejected. *NLRB* v. *North Arkansas Electric Cooperative, Inc.*, 446 F. 2d 602 (CA 8, 1971).

The Second Circuit's observation in *Wheeling* raises a sound challenge which the Board's argument here cannot overcome. If, as the Board contends, its pre-Taft-Hartley policy was merely to exclude managerial personnel from the rank and file, why then has it never found a separate unit of "managerial employees" appropriate in and of itself? If the Board's policy were then as it now contends that it was, it would have been able to find a separate unit of those employees appropriate. Even if managerial personnel lacked a sufficient community of interest to be included within a broader unit, they certainly would constitute an appropriate unit themselves. "Community of interest" would not bar such a unit.

However, in *Yale & Towne Mfg. Co.*, 60 NLRB 626 (1945), the Board specifically found that since the duties and responsibilities of certain time-study personnel made them "managerial", they "should neither be included in a unit with other employees *nor established in a separate unit.*" *Id.*, at 628-9.[6] Therefore, the Board can hardly maintain in retrospect that the mere lack of "community of interest" as between two groups of covered employees was in fact the Board's pre-Taft-Hartley policy. Rather, "managerial employees" were not accorded the right to self-organization precisely because they formulated or enforced management policies or exercised discretion in the performance of their duties.

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6. *Yale & Towne* was overruled in *Ford Motor Company*, 66 NLRB 1317 (1946), discussed *infra* on the basis of the Board's factual determination in *Ford* that time study personnel were not truly "managerial". The holding in *Ford*, however, does not reflect an abandonment of the policy statement expressed in *Yale & Towne*.

Further, the Board's argument that its early policy supports its present view of excluding from the Act's coverage only those managerial persons who formulate or effectuate labor or personnel policies is demonstrably in error.

First, the Board in its brief to this Court, acknowledges that its pre-Taft-Hartley policy excluded managerial employees who were not necessarily concerned with labor relations.[7] This is supported by Board decisions,[8] and it can hardly be denied by the Board now that its policy then contained the restriction it here urges.

Second, shortly before the 1947 amendments, the Board had occasion to review its policy concerning both "managerial employees" and "confidential employees" in *Ford Motor Co.*, 66 NLRB 1317 (1946). While the Board held in *Ford* that it would thereafter restrict the exclusion of "confidential employees" to those having a confidential relationship to persons responsible for formulation of the employer's labor policy, it reaffirmed its prior, *unrestricted*, exclusionary policy regarding "managerial employees."

In *Ford*, the employer contended that certain time study personnel were either "managerial" or "confidential", and on either basis should be excluded from a unit of office clerical employees. With respect to "managerial employees", the Board stated:

> "We have customarily excluded from bargaining units of rank and file workers executive employees who are in a position to formulate, determine and effectuate management policies. These employees we have considered and still deem to be 'managerial', in that they express and make operative the decisions of management." *Id.*, at 1322.

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7. Board's brief at Page 13, n. 6.

8. See, *e.g.*, *Julian P. Friez & Sons; Spicer Mfg. Co.; Hudson Motor Car Co.; Vulcan Corp.*, and those cases cited in Footnotes 3 and 4, *supra.*

About "confidential employees", the Board said the following:

> "We have also excluded from units of rank and file employees, persons who, in the regular course of their duties, have access to confidential data bearing directly upon the employees' labor relations, designating them as 'confidential'. However, upon re-appraisal, we are of the opinion that this definition is too inclusive and needlessly precludes many employees from bargaining collectively with other workers having common interests. Consequently, it is our intention to limit the term 'confidential', so as to embrace only those employees who assist and act in a confidential capacity to persons who exercise 'managerial' functions in the field of labor relations." *Id.*, at 1322.

Had the Board been of the belief that its practice with regard to "managerial employees" required a similar re-evaluation and restriction only to exclude those who themselves "exercise 'managerial' functions in the field of labor relations", it presumably would have so stated.[8] Thus, when Congress enacted the Taft-Hartley amendments in 1947, the Board's policy with regard to managerial personnel was one of exclusion from the coverage by the Act, and the exclusion was not limited only to those who formulate and effectuate their employers' labor policies but extended to those whose duties involved purely business matters as well.

B. The Taft-Hartley Amendments.

Prior to the 1947 amendments, the Board's treatment of one category of management personnel,—supervisors,—exhibited far less consistency that did its policy with respect to those

8. As noted above, the Board found in *Ford* that, based on their duties, the time study employees involved were neither managerial nor confidential. Of course, the factual finding that the duties of the employees at issue did not involve formulation, determination or effectuation of management policies, nor the exercise of independent discretion in the performance of those duties is not a rejection of the standard itself but, rather, a consistent application of it. In fact, the Board's conclusion is supported by its finding that the time-study personnel were merely engaged in routine fact-finding duties through the means of time and motion studies.

managerial persons such as buyers, expeditors, and commercial representatives who formulate or effectuate commercial policies and act as representatives of the employer in dealing with the public.[9] The Board's "policy" with regard to supervisory personnel reached this Court for resolution in *Packard Motor Car Co.* v. *N. L. R. B.*, 330 U. S. 485 (1947). Reaction to that decision compelled Congress to overturn it by amending the Act to exclude "supervisors" from coverage.[10]

The five to four majority of this Court held in *Packard* that, since the term "employee" as defined in the Wagner Act[11] was virtually unrestricted so as to include "any" employee, the Board was not precluded from finding a unit of foremen to be appropriate. Justice Douglas, joined by Chief Justice Vinson and Justice Burton, dissented. Rejecting the Board's contention, Justice Douglas wrote:

> "For if foremen are 'employees' within the meaning of the National Labor Relations Act, so are vice-presidents, managers, assistant managers, superintendents—indeed, all who are on the payroll of the company, including the president; all who are commonly referred to as management, with the exception of the directors. If a union of vice-presidents applied for recognition as a collective bargaining agency, I do not see how we could deny it and yet allow the present application." 330 U. S. at 494.

Justice Douglas was of the view that if Congress had intended such a fundamental change in basic industrial philosophy as

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9. The Board had held that foremen were entitled to organize in an independent union. *Union Colleries Coal Co.*, 41 NLRB 961 (1942). Then it was held that even a separate unit of supervisory personnel would not be appropriate for the purposes of collective bargaining. *Maryland Drydock Co.*, 49 NLRB 733 (1943). Finally, in *Packard Motor Co.*, 64 NLRB 1212 (1945) the Board reversed itself and again held that foremen were entitled to form their own union. This latter decision reached this Court, as discussed herein.

10. See, H. R. Rep. No. 245, 80th Cong., 1st Sess. 13-14, 17 (1947) and S. Rep. No. 105, 80th Cong., 1st Sess. 3-5 (1947).

11. Section 2(3), 49 Stat. 449, 450, 29 U. S. C. Section 152.

that which would result from granting those within the management class the right to self-organization, it would have left a clear and unmistakable trace of that purpose. Reviewing the legislative history of the Wanger Act, he observed that the reports and debates were completely barren of any reference to the collective bargaining problems of supervisory personnel and concluded that Congress could not, therefore, have intended the result reached by the majority.

Congress' response to *Packard,* the exclusion of "supervisors" from coverage by the Act, did not contain that portion of Justice Douglas' dissent relating to the organization of other management personnel. Nor do the debates and reports on the 1947 amendments express any Congressional concern that legislation was needed with respect to the Board's policy concerning "managerial" employees. The Court below reviewed this legislative history and interpreted Congressional silence as a recognition that there were other persons clearly more "managerial" than those involved in labor relations; that it was inconceivable that the Board would treat such personnel as employees; and, therefore, that it was not necessary to enact legislation excluding them.

The Second Circuit's interpretation is consistent with the sound principle that the courts "should enforce a statute in such a manner that its overriding purpose will be achieved, even if the words used leave room for a contrary interpretation.[12] The overriding purpose of the 1947 Act was to "reconcile and, insofar as possible, equalize the power of competing economic forces within the society in order to encourage the making of voluntary agreements governing labor management relations and prevent industrial strife. . . . Its purpose is not artificially to create or manufacture new economic forces."[13]

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12. *N. L. R. B.* v. *Wheeling Electric Co., supra,* at 787, citing *Haberman* v. *Finch,* 418 F. 2d 664, 666 (CA 2, 1969).

13. *Pittsburg Plate Glass Co.* v. *N. L. R. B.,* 427 F. 2d 936, 946 (CA 6, 1970) and cases cited therein.

Justice Douglas, in *Packard*, had viewed the Board's policy with respect to "supervisors" as an artificial creation which was contrary to the philosophy underlying the Act. Congress acted to correct that artificiality.

The Board's hindsight analysis herein creates such an artificial entity by drawing the line not between the forces of management and labor but within the management group itself. Nothing could be more contrary to the express purpose of the Act.[14] The Board never accorded "managerial" employees the right to organize prior to the 1947 amendments. However, the Board now asserts that despite its practice to the contrary, "managerial" employees have always been covered by the Act; and, therefore, Congressional silence constitutes approval of the view it now takes. The Eighth Circuit responded to the Board's interpretation by stating:

> "While not controlling, the Court is entitled to give considerable weight to the construction of a statute by the administrative agency entrusted with execution when that statute has been subsequently considered by Congress and not materially amended. This is especially true here where Congress enacted an amendment excluding supervisors from coverage after they had been included by Board interpretation but did not make reference to 'managerial employees' who had not been so included. *N. L. R. B.* v. *North Arkansas Electric Cooperative, Inc., supra,* at 607. (Footnotes omitted.)

In short, Congress was silent with respect to the Board's practice because that practice was not contrary to the purposes of the Act. The Board's contention here, however, involves an artificial restructuring of that practice that is contrary to Congressional intent. The further contention of the Board that

14. See, Sec. 1, Labor Management Relations Act 1947, 29 U. S. C. Section 141 and See, National Labor Relations Act, 29, U. S. C. Section 151, declaring Congress' conviction that free collective bargaining and the prevention of industrial strife can only be accomplished if the forces of labor and management recognize the other's legitimate rights.

Congress was mistaken as to the true nature of Board policy with respect to "managerial" employees is belied by the Board's own continued adherence to this "mistaken" policy after 1947. Moreover, the Board's contention is contrary to sound policy and principle.

One of the purposes underlying the Talft-Hartley amendments was to give effect to the recognized rights of management. Management's legitimate goal is to operate the Employer's business and control allocation of resources—both human and technological—in order to obtain a level of acceptable profitability. In pursuit of the goal, management must be accorded the right to formulate and determine its commercial and business policies unhindered by Union interference. The unionization of those who formulate and exercise discretion in making critical business judgments would have such an interfering effect on the ability of the Company to function and thus maintain its profitability.

The needs of management require that managerial personnel have total freedom to function on the Company's behalf on its own terms. Unionization of managerial personnel would impose restrictions upon their conduct as a result of any terms and conditions contained in a collective bargaining agreement. Management further requires an undivided loyalty on the part of those responsible for making decisions and formulating policies in all respects—not merely from those involved in labor or personnel matters. The mere fact of unionization of such personnel would result in a necessarily divided loyalty. The limited restriction on the organization of managerial employees here urged by the Board fails to respect these fundamental managerial prerogatives recognized in the Act. The language in the concurring opinion of Justices Stewart, Douglas and Harlan in *Fibre-Board Paper Products Corp.* v. *N. L. R. B.*, 379 U. S. 203 (1964), 225-226 is particularly apt in this respect:

"It is possible that . . . Congress may eventually decide to give organized labor or government a far heavier hand in controlling what until now have been considered the prerogatives of private business management. That path would mark a sharp departure from the traditional principles of a free enterprise economy. Whether we should follow it is, within constitutional limitations, for Congress to choose. But it is a path which Congress certainly did not choose when it enacted the Taft-Hartley Act."

C. Board Policy Subsequent to the Taft-Hartley Amendments.

The history of the Board's treatment of "managerial" employees after the passage of the Taft-Hartley amendments leaves no doubt that its practice continued to be one of excluding such personnel from the Act's coverage even though their duties were unrelated to labor or personnel relations.

Shortly after the 1947 amendments, the Board stated that its policy had been unaffected by the recent enactment. In *Palace Laundry Dry Cleaning Corp.*, 75 NLRB 320 (1947) the Board refused to exclude store managers from a store-wide unit because their limited duties and responsibilities made them neither supervisory nor managerial. The Board rejected the contention of supervisory status because the managers had no authority with respect to hire, discharge or discipline. In response to the contention that they were "managerial", the Board stated:

"The determination of 'managerial', like the determination of 'supervisory' is to some extent necessarily a matter of the degree of authority exercised. We have in the past, and before the passage of the recent amendments to the Act, recognized and defined as 'managerial' employees, executives who formulate and effectuate management policies by expressing and making operative the decisions of their employer, *and have excluded such managerial employees from bargaining units.* Matter of *Ford Motor Company, Chicago Branch,* 66 N. L. R. B. 1317. (Emphasis added)

"We believe that the Act, as amended, contemplates the continuance of this practice."

This practice of excluding "managerial" personnel from the right to statutory self-organization continued to encompass such persons as buyers who had no relationship with their employer's labor policies. For example, in *Denver Dry Goods Co.*, 74 NLRB 1167 (1947) assistant buyers were excluded from a unit of sales, clerical and office employees because their duties were "more closely identified with management." They were required to compile good sales records as an example to other employees, assisted buyers in the selection of merchandise and took over buyers' duties when the buyers were absent.

Similarly, in *Denton's, Inc.*, 83 NLRB 35 (1949) personnel with buying functions were excluded from a unit of sales employees because they contacted vendors in the performance of their duties even though some of them spent only twenty per cent of their time in buying and the rest in selling. Also, in *American Locomotive Co.*, 92 NLRB 115 (1950), buyers were excluded from an office and clerical because they were authorized to negotiate for credit and made purchases for the employer in an amount of six million dollars a year. The Board held that such personnel could *"not be accorded bargaining rights under the Act." Id.*, at 117.

The Board, in support of its newly enunciated rule, contends, of course, that managerial personnel such as those in the above cases were not really excluded from the right of statutorily-aided self-organization but were merely excluded from the larger units because they lacked a sufficient interest to be included. The fact that they were excluded from larger units reflects only the fact that the cases arose in that context and the petitioners did not seek a separate unit of those "managerial" employees; however, in *Swift & Co.*, 115 NLRB 752 (1956) the Board ruled squarely on the propriety of granting the right to representation to a unit consisting wholly of "managerial" employees, adhering to its prior practice as expressed, for example, in *Yale & Towne Mfg. Co., supra.*

The personnel at issue in *Swift* were buyers—procurement drivers—who kept supplies of eggs and poultry coming into the employer's plant and exercised discretion in meeting competitors' prices. They had nothing to do with labor or personnel matters, but the Board found their duties were an "exercise of a managerial prerogative." The petitioning unit sought, alternatively, a separate unit confined to those employees.

In reliance upon *the same legislative history* that it here urges in support of its contrary contention, the Board there categorically stated:

> "We are of the opinion that such a unit is not appropriate. It was the clear intent of Congress to exclude from the coverage of the Act all individuals allied with management. Such individuals cannot be deemed to be employees for the purposes of the Act. Accordingly, we reaffirm the Board's position that representatives of management may not be accorded bargaining rights under the Act and deny the Petitioners' alternative request." *Id.*, at 753-4 (Footnotes omitted)

Thus, from the very inception of the Act and continuing for approximately 30 years, the Board consistently excluded from the right to union representation those personnel who exercised managerial functions in purely business related areas, and not only those who exercised responsibility in the formulation of labor or personnel policies.

The Board repudiates its clear statement of policy set forth in *Swift* by contending that that case was an aberration and a "sweeping and inaccurate" statement of its practice.[15] This contention is patently without merit. The Board's statement of policy in *Swift* is consistent with both its pre and post 1947 practice and the proper interpretation of Congressional intent with respect to that practice.[16] Rather, *Swift* is said to be an

15. Board's brief at 27.

16. See, *Spicer Mfg. Corp., supra; Hudson Motor Car Co., supra; Yale & Towne Mfg. Co., supra; Ford Motor Co., supra,*

"aberration" because it cannot be explained away by the Board in a manner consistent with the view it now urges on this Court. In addition to its overruling of *Swift*, the Board also wishes now to re-write history.

First, the Board contends that its policy was not as it was in fact.[17] Next, the Board argues that Congress failed to enact legislation because it approved non-existent policy under the mistaken belief as to what that practice really was.[18] Finally, the Board concludes that *Swift*, which merged the Board's practice in fact with a clear statement of that practice, was inaccurate. In this respect, it is worthy to note that in its first petition for enforcement in the *North Arkansas* case,[19] the Board, citing a whole litany of authority, including *Swift*, which it now attempts to explain away or repudiate, clung to the very principle that it now asks this Court to reject. There, the Board argued that it had always excluded "managerial" personnel *"from the protection of the Act"*. The Board further stated its basis for the policy:

> "This exclusionary practice rests on the premise that the functions and interests of such individuals are more closely allied with those of management than with production workers, and therefore they are not truly 'employees' within the meaning of Section 2(3) of the Act, as read in conjunction with Section 2(2)" [defining employer].[20]

Further, the various Circuit Courts of Appeals, called upon to interpret the Board's practice, have viewed it as properly excluding from coverage of the Act not only those managerial personnel involved in labor relations, but all other managerial

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Palace Laundry Dry Cleaning Corp., supra; Swift & Co., supra; N. L. R. B. v. *Wheeling Electric Co., Inc. supra; N. L. R. B.* v. *North Arkansas Electric Cooperative, Inc., supra.*

17. Subpart A above.

18. Subpart B above.

19. 412 F. 2d 324 (CA 8, 1969).

20. 446 F. 2d 602, 605, citing the Board's brief.

personnel as well. A review of those decisions[21] reveals that there have evolved two independent tests to determine managerial status: (1) whether the employee is "so closely related to or aligned with management as to place the employee in a position of potential conflict of interest between his employer on the one hand and his fellow workers on the other" and (2) "whether the employee is formulating, determining and effectuating his employer's policies or has discretion, independent of an employer's established policy, in the performance of his duties." *Illinois Journal-Register, Inc.* v. *N. L. R. B.*, 412 F. 2d 37, 41 (CA 7, 1969).

The first test concerns itself with "managerial" employees who are involved with policies bearing on labor relations, resulting in a potential and serious conflict of interest. However, contrary to the Board's urgings, this first test is not, and has never been, the exclusive measure of managerial status. The second test, as applied by the Courts as well as previously by the Board itself, questions whether the individual's functions in *other* areas of managerial responsibility exempt him from the Act's coverage.

For example, in *N. L. R. B.* v. *Illinois Journal Register, supra,* at issue was the "managerial" status of certain district newspaper circulation personnel. To determine whether these personnel might be managerial under the first test, the court looked to see what concern, if any, they had with the employees' labor relations policy. However, to determine whether the circulation personnel qualified under the second test, the court examined a myriad of non-labor related duties, such as: the handling of customer complaints; adjusting and remitting sales receipts; participation in circulation campaigns; attending sales

21. See, *International Ladies Garment Workers Union* v. *N. L. R. B.*, 339 F. 2d 116 (CA 2, 1964); *Retail Clerks International Association* v. *N. L. R. B.*, 336 F. 2d 642 (CA DC, 1966); *Illinois State Journal-Register, Inc.* v. *N. L. R. B.*, 412 F. 2d 37 (CA 7, 1969); *Westinghouse Electric Corporation* v. *N. L. R. B.*, 424 F 2d 1151 (CA 7, 1970)

meetings; recommending discounts for delivery routes; contacting news dealers on behalf of the Employer; leasing space to serve as substations within their districts; and making purchases. Similarly, in *Westinghouse Electric Corp.* v. *N. L. R. B., supra,* the court, under the second test, examined the duties of certain engineers relating to purely technical matters and to the authority of the engineers to pledge the employers credit. Thus, the courts have recognized that, under the Act, persons should properly be excluded from coverage as "managerial" employees whose duties or functions on behalf of management were not limited to the creation or effectuation of personnel or labor relations policies.

D. The Board May Not Reinterpret the Act to Suit a Change in Policy Without Sound Basis for That Change; the Board Has Shown No Such Basis Here.

The National Labor Relations Act reflects the studied will of Congress as to what this country's labor-management policies shall be. Once enacted, the statute does not change unless the Congress determines that a change is needed. The Board, on the other hand, is merely the instrument for enforcing the Act and is not free to reverse a practice of 30 years by merely taking a revisionist view of history and reinterpretating the Act in accordance with that view. Such a reversal must have a sound basis.

For example, in *N. L. R. B.* v. *Quality Manufacturing Co.,* 481 F. 2d 1018 (CA 4, 1973) the Board attempted to reverse a 25-year practice. Prior to the *Quality* case, the Board had never found that an employer's refusal to allow an employee union representation at an investigatory interview constituted a violation of Section 8(a)(1) of the Act. The Board reversed its view in *Quality*[22] and offered no justification for this reversal other than that "after reflection" the Board felt that the em-

22 195 NLRB No. 42 (1972).

ployer's conduct constituted a "serious violation" of the Act. In response to the Board's contention the Fourth Circuit stated:

> "It is clear beyond question, however, that the Board has no power to alter or rearrange employer-employee relations to suit its very whim. Rather, the Board can only determine whether the Act has been violated. And it would appear that in the entire history of the law as developed above, the management prerogative of conducting an investigatory interview such as Quality attempted here has not been considered a violation of the Act." *N. L. R. B.* v. *Quality Manufacturing Co., supra,* at 1025.

The Seventh Circuit reached the same conclusion and refused enforcement of a Board order involving the same policy reversal at issue in *Quality* in *Mobil Oil Corp.* v. *N. L. R. B.*, 482 F. 2d 842 (CA 7, 1973).

During the present term, this Court had occasion to review a practice which the Board changed after a lengthy period of time in *N. L. R. B.* v. *Savair Manufacturing Co.*, ... U. S. ....., Daily Labor Report No. 242 (BNA, December 17, 1973). Involved was the Board's reversal of its position regarding whether a union's offer to waive initiation fees to those employees who signed a union recognition form prior to a Board-conducted election interfered with the principle of "fair and free choice of bargaining representatives by employees" guaranteed by Section 9 of the Act. In 1954 the Board held that such an offer constituted interference with employees' selection in a Board conducted election.[23] Subsequently, the Board reversed itself merely on the basis of its re-evaluation that it was "completely illogical to characterize as improper [the offer of waiver] as inducement or coercion . . .".[24]

Justice Douglas, speaking for the majority in *Savair,* upheld the Circuit Court's order denying enforcement of the Board's

23. *Lobue Bros.*, 109 NLRB 1182 (1954).

24. *DIT-MCO, Inc.*, 163 NLRB 1019, at 1021.

bargaining order,[25] thus rejecting the Board's reversal in policy. Important here is the reason for rejecting the Board's view, and that was the lack of sound basis for the Board's reversal of position. Thus, even in an area admitting to wide latitude and discretion in the exercise of Board expertise, as is the determination as to what conduct might constitute "interference" and "coercion" in the selection of a bargaining agent, the Board is not free to reverse its course without justifiable grounds.[26] Much greater justification must be required for the Board to reverse itself in an area that involves a question of its basic jurisdiction, or statutory coverage, such as the issue involved herein. Particularly significant here is the fact that during the 30 years of consistent exclusion of all managerial employees from coverage, Congress has amended the Act twice, and conceivably could have amended it every year, had it felt the Board's practices were contrary to the legislative will. The Board is not now free to re-write that 30 years without a sound basis. Merely arguing, as the Board does, that it has always given "managerial" employees the Act's protection, in the face of its demonstrable practice to the contrary, is not such a basis.

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25. 470 F. 2d 305 (CA 6, 1973).

26. Justice White, in his dissent in *Savair* recognized that the issue involved the question of "the proper allocation of institutional responsibility between an administrative agency and a reviewing court." However, those Labor Board cases relied on by the dissent did not involve reversal of longstanding policy. *NLRB* v. *A. J. Tower*, 329 U. S. 324 (1945) was concerned with a challenge to the validity of the Board's post-election rule but not with a change in the Board's position with respect to that rule; *NLRB* v. *Waterman S. S. Co.*, 309 U. S. 326, involved a challenge to the Board's interpretation of the statutory language of the Act, but not a reversal of the Board's interpretation of that language; *NLRB* v. *Wyman-Gordon Co.*, 394 U. S. 759 (1969), discussed *infra* involved the Board's institution of a new rule requiring employers to submit an eligibility list in Board elections, but did not involve a change from a prior position with respect to that tule as is involved here. Insofar as the propriety of the Board's reversal of policy herein is concerned, these cases are of little aid.

E. The Buyers Involved in the Instant Case Qualify for Exclusion as "Managerial" Employees.

Despite the absence of any labor relations function, the employer's buyers in this case are managerial employees properly excludable from the Act's coverage.

As observed by the court below, although the buyers can commit the employer's credit for amounts not to exceed five thousand dollars ($5,000) without concurrence of higher authority, the aggregate amount so pledged over a nineteen month period was in excess of seven million dollars, and one of them alone committed over one million dollars.[27] The discretion possessed by these buyers in this respect is comparable with that enjoyed by buyers in *American Locomotive Co., supra,* and far more extensive than in *Swift & Co., supra.*

Further, where the amount of purchase is $5,000 or less, the buyers have authority to cancel the contract and place the order with an alternate vendor.[28] This exercise of managerial discretion is no less than that which qualified expeditors in *Spicer Mfg. Corp., supra,* for exclusion. Also, on contracts involving the Minute Man project which accounts for seventy percent of the Employer's sales, the buyers work with a "team consisting of supervisory personnel from the engineering, quality assurance, manufacturing and finance departments. . . . Once agreement [on the terms of the contract] is reached, the buyer is responsible for seeing that contracts are complied with and adjusting disputes."[29]

Thus, the buyers involved in the instant case are required to exercise independent and sound business judgments in the performance of duties fundamentally important to the employer's operations. The employer's success or failure as an enterprise depends upon the contractual relationships negotiated, executed

27. 475 F. 2d at 486, n. 1.
28. 475 F. 2d at 487.
29. 475 F. 2d at 486-7.

and administered by these buyers and upon the buyers' total commitment to act in the employer's best interests. Though their duties have no relationship to labor relations or personnel matters, they are, nonetheless, managerial. They should therefore be excluded from coverage under the National Labor Relations Act.

II.

THE LOWER COURT'S HOLDING THAT THE INSTANT CASE MUST BE REMANDED FOR RULE-MAKING PROCEEDINGS IS IN ERROR AND MUST BE REVERSED.

The court below was unsure whether the Board's decision in the instant case represented the enunciation of a legally erroneous new rule excluding from the Act's coverage only those "managerial" employees whose duties involved them in labor relations matters, or whether the Board applied its prior standard of excluding all "managerial" employees, but merely found, as a factual matter, those persons in issue not truly "managerial". The Court, therefore, concluded that the case must be remanded to the Board. The Court further held that if the Board were here establishing a new "rule" for the treatment of managerial personnel, it was precluded from doing so in an adjudicatory proceeding but must, upon remand, hold rule-making hearings in accordance with the provisions of Section 4 of the Administrative Procedures Act.[30]

The Chamber respectfully disagrees with the court's holding in this respect. It is the *amicus*' view that the Board did enunciate a new and legally erroneous rule in this case, but its action, though requiring reversal, does not require it to accept a remand for conducting rule-making hearings.

The Second Circuit's holding rests in part on its uncertainty as to the basis for the Board's decision in this case. The Court, therefore, felt that judicial determination as to the legality of the

30. 5 U. S. C. Sec. 553.

newly enunciated rule was precluded by this Court's first *Chenery* opinion. *S. E. C.* v. *Chenery Corp.*, 318 U. S. 80 (1943). In *Chenery*, this Court, in discussing the principles governing reviewability of agency action, stated:

> "If the action rests upon an administrative determination—an exercise of judgment in an area which Congress has entrusted to the agency—of course it must not be set aside because the reviewing court might have made a different determination were it empowered to do so. But if the action is based upon a determination of law as to which the reviewing authority of the courts does come into play, an order cannot stand if the agency has misconceived the law. In either event the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained." *Id.*, at 94.

However, the basis for the Board's decision herein is not uncertain. The Board did not dispute the Employer's contention that Bell's buyers were "managerial". Rather, the Board concluded that despite the fact that the buyers might be "managerial", they were nonetheless entitled to union representation.[31] This is the thrust of the Board's whole argument, and there exists no uncertainty that the Board's decision rests on this basis. Therefore, the barrier of uncertainty does not here exist to preclude this Court from ruling on the legality of the Board's determination, and there is no need for a remand on that basis.[32]

However, the issue of uncertainty is only one of the reasons for the Second Circuit's holding. The second, and perhaps more critical, is the court's view that the Board could not properly fromulate a new policy, having the effect of a rule to be

31. See 197 NLRB No. 30, *supra*.

32. However, it is recognized that even if this Court declares the Board's newly enunciated policy invalid, a remand might be required to determine whether Bell's buyers are nevertheless "managerial" under the proper test.

prospectively applied in all cases, in an adjudicatory proceeding but, rather, is required to conduct rule-making hearings in accordance with Section 4 of the Administrative Procedure Act. The Chamber similarly disagrees with this argument and, in this respect, agrees with the Board that rule-making would be an inappropriate procedure for deciding the issue herein.[33]

The basis for the Second Circuit's view is that the Board, if it chooses, as it has here done, to reverse a policy of long standing respecting its treatment of "managerial" employees,—particularly since the Board had engendered a justifiable contrary belief as to what its practice had been,—is required to engage in rule making as a precondition to effecting such a policy change. The Court relies for its view on an expression of approval of the rule-making process made in the second *Chenery* decision, *S. E. C.* v. *Chenery Corp.*, 332 U. S. 194 (1947) and on the observations of Justice Fortas, speaking for the plurality, and Justices Douglas and Harlan, dissenting, in *N. L. R. B.* v. *Wyman-Gordon Company*, 394 U. S. 759 (1969) regarding the Board's formulation of its *Excelsior* rule.[34]

While it is correct, as noted by the court below, that in *Chenery, supra*, at 202, this Court observed that while "[t]he function of filling the interstices of the [Securities] Act should be performed, as much as possible, through . . . quasi-legislative promulgation of rules to be applied in the future . . .", this Court further noted that ". . . any rigid requirement to that effect would make the administrative process inflexible and incapable of dealing with many specialized problems which

33. To be sure, the Chamber, as argued in the preceding sections of this brief, disagrees with the Board's theory in support of its decision and order and that the policy as set forth therein is a proper exercise of its duties under the National Labor Relations Act; however, we agree, for the reasons set forth here, that an adjudicatory proceeding is a proper procedure for resolving the question presented.

34. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966).

arise." Thus, this Court's expression in *Chenery* of a preference for rule-making proceedings over adjudicatory proceedings as a means for formulating agency rules or policy, must be taken as qualified; and, whether or not a particular change in policy might more properly proceed by *ad hoc* litigation would depend upon whether any standard that might result through quasi-legislative proceedings would contribute to the administrative process in dealing with the problem.

Insofar as this particular change in Board policy is concerned, it is not unlike many others which have preceded it to the Courts of Appeals[35] and to this Court[36] out of adjudicatory proceedings. This particular issue, like others which arise under the National Labor Relations Act, is not most efficiently and completely resolved through rule-making because any rule that might result would of necessity have to be sufficiently broad to cover not only Bell's buyers, or buyers in general, but also any personnel of any employer subject to the Act alleged to be "managerial". This would be true no matter whether the rule so formulated were, as the Board argues, restricted to labor relations matters, or to all management functions. Under either test, an evidentiary hearing would have to be held in each case to determine whether those persons in issue were within or without the rule. To require the Board to hold hearings to formulate such rule would not contribute to the Board's process in dealing with the issue since a case-by-case determination must be made in any event. Indeed, proceeding by rule-making

35. See, for example, *NLRB* v. *Quality Manufacturing Co., supra,* and *Mobile Oil Corp.* v. *NLRB, supra,* discussed in Subpart D, *supra.*

36. See, for example: *NLRB* v. *Gissel Packing Co.,* 395 U. S. 575 (1969), wherein the Board announced a change in policy for determining whether an employer unlawfully refuses to bargain when presented with a union's claim of majority status for the first time in proceedings before this Court; and *NLRB* v. *Savair Mfg. Co., supra,* where, this term, the Board's reversal of its long-term policy regarding the loyalty of a union's waiver of initiation fees was rejected.

would, under the circumstances, be a wasteful and unnecessary act."

Alternatively, the Board could, after holding hearings, promulgate a narrow and specific set of rules governing particular cases. However, such a set of rules, though perhaps capable of dealing with the buyers at issue here, could not conceivably be broad enough to encompass the myriad duties of all personnel in each plant, store, shop or industry in this country. In short, such rules would make the Board's processes "inflexible and incapable of dealing with many of the specialized problems which arise."

Moreover, *N. L. R. B.* v. *Wyman-Gordon*, does not, as the court below suggests, detract from the conclusion that *ad hoc* litigation is the preferable procedure for resolving issues as the one presented herein. Indeed, it furthers that conclusion.

Wyman-Gordon involved a "rule" in the sense that it could be, and was to be, applied to fit all cases at all times. To require, as the *Excelsior* rule does, that an employer submit to the Board a list of eligible voters, does not involve factual inquiries on a case-by-case basis as does the resolution of the problem here, where findings, conclusions and orders in each case must be developed by evidence and supported by facts,—facts that will vary in every case. This procedure is not "rule-making" although the decisions and orders of the Board become its "policy". Justice Fortas observed the distinction in *Wyman-Gordon* when he noted:

> "Adjudicated cases may and do, of course, serve as vehicles for the formulation of agency policies, which are applied and announced therein. See Friendly, The Federal Administrative Agencies 36-52 (1962). They generally provide a guide to action that the agency may be expected to take in future cases. Subject to the qualified role of *stare decisis* in the administrative process, they may serve as precedents. But this is far from saying, as the Solicitor General suggests, that commands, decisions, or policies announced in adjudication are "rules" in the sense that

they must, without more, be obeyed by the affected public." *NLRB* v. *Wyman-Gordon Co., supra,* at 765 (footnote omitted).

Here, the Board's new "rule" is a reversal of policy, and as such, serves as precedent to inform all those concerned that it will act in accordance with its new policy when presented with an allegation of "managerial" status. It is not a command in the sense that it must be obeyed by all persons in the future.[37] The issue of managerial status in each and every case must still be litigated even under the Board's new "rule", unless reversed by this Court.

Accordingly, the Second Circuit's holding that this case must be remanded for rule-making proceedings must be reversed.

37. As pointed out by the Board in its brief at 31, the factor which caused Justice Douglas and Harlan to dissent in *Wyman-Gordon* was not the formulation of the rule itself in *Excelsior,* but, rather, the fact that the Board, by declining to apply it to the parties in *Excelsior,* but only in election proceedings arising thirty days after, appeared to be engaging in rule making without compliance with Section 4 of the Administrative Procedure Act. Here, however, the Board applied the new "rule" to the parties to this proceeding.

CONCLUSION.

For the foregoing reasons, it is urged that the Court affirm the judgment of the Court of Appeals insofar as it concluded that *all* "managerial" employees, whatever the nature of the management duties they perform, are not covered by the National Labor Relations Act and reverse that part of the court's decision remanding this case to the Board for rule-making proceedings.

Respectfully submitted,

MILTON SMITH,
General Counsel,

RICHARD B. BERMAN,
Chamber of Commerce of the
United States of America,
1615 H Street, N. W.,
Washington, D. C. 20006,

GERARD C. SMETANA,
925 South Homan Avenue,
Chicago, Illinois 60607,

JERRY KRONENBERG,
HOWARD MOCERF,
BOROVSKY, EHRLICH & KRONENBERG,
120 South LaSalle Street,
Chicago, Illinois 60603,
Attorneys for the Amicus Curiae.

Syllabus

NATIONAL LABOR RELATIONS BOARD v. BELL AEROSPACE COMPANY, DIVISION OF TEXTRON, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 72-1598. Argued January 14, 1974—Decided April 23, 1974

On a petition by a labor union for a representation election, the National Labor Relations Board (NLRB) held that the buyers employed by respondent company constituted an appropriate collective-bargaining unit and directed an election. The NLRB stated that even though the buyers might be "managerial employees" they were nevertheless covered by the National Labor Relations Act (NLRA) in the absence of any showing that union organization of the buyers would create a conflict of interest in labor relations. Subsequently the buyers voted for the union, and the NLRB certified it as their exclusive bargaining representative. The company refused to bargain, however, and was found guilty of an unfair labor practice and ordered to bargain. The Court of Appeals denied enforcement on the grounds that (1) it was not certain that the NLRB's decision rested on a factual determination that the buyers were not true "managerial employees" rather than on a new, and in the court's view, erroneous holding that the NLRB was free to regard all managerial employees as covered by the Act unless their duties met the conflict-of-interest touchstone, and (2) in view of its previous contrary decisions, the NLRB was required to proceed by rulemaking rather than by adjudication in determining whether buyers are "managerial employees." *Held:*

1. Congress intended to exclude from the protections of the NLRA all employees properly classified as "managerial," not just those in positions susceptible to conflicts of interest in labor relations. This is unmistakably indicated by the NLRB's early decisions, the purpose and legislative history of the Taft-Hartley amendments to the NLRA in 1947, the NLRB's subsequent construction of the Act for more than two decades, and the decisions of the courts of appeals. Pp. 274–290.

2. The NLRB is not required to proceed by rulemaking, rather

than by adjudication, in determining whether buyers or some types of buyers are "managerial employees." Pp. 290–295.

(a) The NLRB is not precluded from announcing new principles in an adjudicative proceeding, and the choice between rulemaking and adjudication initially lies within the NLRB's discretion. *SEC* v. *Chenery Corp.*, 332 U. S. 194; *NLRB* v. *Wyman-Gordon Co.*, 394 U. S. 759. P. 294.

(b) In view of the large number of buyers employed in manufacturing, wholesale, and retail units, and the wide variety of buyers' duties, depending on the company or industry, any generalized standard would have no more than marginal utility, and the NLRB thus has reason to proceed with caution and develop its standards in a case-by-case manner with attention to the specific character of the buyers' authority and duties in each company. P. 294.

475 F. 2d 485, affirmed in part, reversed in part, and remanded.

POWELL, J., delivered the opinion of the Court, in which BURGER, C. J., and DOUGLAS, BLACKMUN, and REHNQUIST, JJ., joined. WHITE, J., filed an opinion dissenting in part, in which BRENNAN, STEWART, and MARSHALL, JJ., joined, *post*, p. 295.

Norton J. Come argued the cause for petitioner. With him on the brief were *Solicitor General Bork, Peter G. Nash, John S. Irving, Patrick Hardin,* and *Linda Sher.*

Richard E. Moot argued the cause and filed a brief for respondent.*

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents two questions: first, whether the National Labor Relations Board properly determined

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**John Fillion, Stephen Schlossberg, Abe F. Levy, Victor Van Bourg, Charles K. Hackler,* and *Jack Levine* filed a brief for the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America as *amicus curiae* urging reversal.

Milton Smith, Gerard C. Smetana, and *Jerry Kronenberg* filed a brief for the Chamber of Commerce of the United States as *amicus curiae*.

that all "managerial employees," except those whose participation in a labor organization would create a conflict of interest with their job responsibilities, are covered by the National Labor Relations Act; [1] and second, whether the Board must proceed by rulemaking rather than by adjudication in determining whether certain buyers are "managerial employees." We answer both questions in the negative.

I

Respondent Bell Aerospace Co., Division of Textron, Inc. (company), operates a plant in Wheatfield, New York, where it is engaged in research and development in the design and fabrication of aerospace products. On July 30, 1970, Amalgamated Local No. 1286 of the United Automobile, Aerospace and Agricultural Implement Workers of America (union) petitioned the National Labor Relations Board (Board) for a representation election to determine whether the union would be certified as the bargaining representative of the 25 buyers in the purchasing and procurement department at the company's plant. The company opposed the petition on the ground that the buyers were "managerial employees" and thus were not covered by the Act.

The relevant facts adduced at the representation hearing are as follows. The purchasing and procurement department receives requisition orders from other departments at the plant and is responsible for purchasing all of the company's needs from outside suppliers. Some items are standardized and may be purchased "off the shelf" from various distributors and suppliers. Other items must be made to the company's specifications, and the requisition orders may be accompanied by detailed blueprints and other technical plans. Requisitions often designate a particular vendor, and in some instances the

[1] As amended, 61 Stat. 136, 73 Stat. 519, 29 U. S. C. § 151 *et seq.*

buyer must obtain approval before selecting a different one. Where no vendor is specified, the buyer is free to choose one.

Absent specific instructions to the contrary, buyers have full discretion, without any dollar limit, to select prospective vendors, draft invitations to bid, evaluate submitted bids, negotiate price and terms, and prepare purchase orders. Buyers execute all purchase orders up to $50,000. They may place or cancel orders of less than $5,000 on their own signature. On commitments in excess of $5,000, buyers must obtain the approval of a superior, with higher levels of approval required as the purchase cost increases. For the Minute Man missile project, which represents 70% of the company's sales, purchase decisions are made by a team of personnel from the engineering, quality assurance, finance, and manufacturing departments. The buyer serves as team chairman and signs the purchase order, but a representative from the pricing and negotiation department participates in working out the terms.

After the representation hearing, the Regional Director transferred the case to the Board. On May 20, 1971, the Board issued its decision holding that the company's buyers constituted an appropriate unit for purposes of collective bargaining and directing an election. 190 N. L. R. B. 431. Relying on its recent decision in *North Arkansas Electric Cooperative, Inc.*, 185 N. L. R. B. 550 (1970), the Board first stated that even though the company's buyers might be "managerial employees," [2] they

[2] The opinion revealed that Board Member Jenkins did not view the company's buyers as exercising managerial functions and therefore considered them "employees" under the Act to the same extent as production and maintenance employees. 190 N. L. R. B., at 431 n. 2. A majority of the Board, however, apparently accepted the company's contention that the buyers were managerial employees. *Id.*, at 432 n. 3.

were nevertheless covered by the Act and entitled to its protections. The Board then rejected the company's alternative contention that representation should be denied because the buyers' authority to commit the company's credit, select vendors, and negotiate purchase prices would create a potential conflict of interest between the buyers as union members and the company. In essence, the company argued that buyers would be more receptive to bids from union contractors and would also influence "make or buy" decisions in favor of "make," thus creating additional work for sister unions in the plant. The Board thought, however, that any possible conflict was "unsupported conjecture" since the buyers' "discretion and latitude for independent action must take place within the confines of the general directions which the Employer has established" and that "any possible temptation to allow sympathy for sister unions to influence such decisions could effectively be controlled by the Employer." 190 N. L. R. B., at 431.

On June 16, 1971, a representation election was conducted in which 15 of the buyers voted for the union and nine against. On August 12, the Board certified the union as the exclusive bargaining representative for the company's buyers. That same day, however, the Court of Appeals for the Eighth Circuit denied enforcement of another Board order in *NLRB* v. *North Arkansas Electric Cooperative, Inc.*, 446 F. 2d 602, and held that "managerial employees" were not covered by the Act and were therefore not entitled to its protections.[3] *Id.*, at 610.

Encouraged by the Eighth Circuit's decision, the company moved the Board for reconsideration of its earlier

[3] As mentioned, the Board had relied on its *North Arkansas* decision in the present case. The Eighth Circuit's earlier opinion concerning a related issue in the same case is reported at 412 F. 2d 324 (1969).

order. The Board denied the motion, 196 N. L. R. B. 827 (1972), stating that it disagreed with the Eighth Circuit and would adhere to its own decision in *North Arkansas*. In the Board's view, Congress intended to exclude from the Act only those "managerial employees" associated with the "formulation and implementation of labor relations policies." *Id.*, at 828. In each case, the "fundamental touchstone" was "whether the duties and responsibilities of any managerial employee or group of managerial employees do or do not include determinations which should be made free of any conflict of interest which could arise if the person involved was a participating member of a labor organization." *Ibid.* Turning to the present case, the Board reiterated its prior finding that the company had not shown that union organization of its buyers would create a conflict of interest in labor relations.

The company stood by its contention that the buyers, as "managerial employees," were not covered by the Act and refused to bargain with the union. An unfair labor practice complaint resulted in a Board finding that the company had violated §§ 8 (a)(5) and (1) of the Act, 29 U. S. C. §§ 158 (a)(5) and (1), and an order compelling the company to bargain with the union. 197 N. L. R. B. No. 30 (1972). Subsequently, the company petitioned the United States Court of Appeals for the Second Circuit for review of the order and the Board cross-petitioned for enforcement.

The Court of Appeals denied enforcement. 475 F. 2d 485 (1973). After reviewing the legislative history of the Taft-Hartley Act of 1947, 61 Stat. 136, and the Board's decisions in this area, the court concluded that Congress had intended to exclude all true "managerial employees" from the protection of the Act. It explained

that this "exclusion embraced not only an employee 'so closely related to or aligned with management as to place the employee in a position of conflict of interest between his employer on the one hand and his fellow workers on the other' but also one who is 'formulating, determining and effectuating his employer's policies or has discretion, independent of an employer's established policy, in the performance of his duties,' Illinois State Journal-Register, Inc. v. NLRB, 412 F. 2d 37, 41 (7 Cir. 1969)." *Id.*, at 494. The court added, however, that "the Board would [not] be precluded, on proper proceedings, from determining that buyers, or some types of buyers, are not true 'managerial employees' and consequently come within the protection of § 8 (a)(5) and (1)." *Ibid.*

Turning to the merits of the present case, the court acknowledged that there was substantial evidence that the company's buyers were not sufficiently high in the managerial hierarchy to constitute true "managerial employees." Nevertheless, the court denied enforcement for two reasons. First, it was not certain that the Board's decision rested on a factual determination that these buyers were not true "managerial employees" rather than on "its new, and in our view, erroneous holding that it was free to regard *all* managerial employees as covered by the Act unless their duties met" the conflict-of-interest touchstone. *Id.*, at 494–495. Second, although the Board was not precluded from holding that buyers, or some types of buyers, were not "managerial employees," the court thought that, in view of the Board's long line of cases holding the contrary, it could not accomplish this change of position by adjudication. Rather, the Board should conduct a rulemaking proceeding in conformity with § 6 of the Act, 29 U. S. C. § 156. The court therefore remanded the case to the Board for such a proceeding.

We granted the Board's petition for certiorari. 414 U. S. 816.

II

We begin with the question whether all "managerial employees," rather than just those in positions susceptible to conflicts of interest in labor relations, are excluded from the protections of the Act.[4] The Board's early decisions, the legislative history of the Taft-Hartley Act of 1947, 61 Stat. 136, and subsequent Board and court decisions provide the necessary guidance for our inquiry. In examining these authorities, we draw on several established principles of statutory construction. In addition to the importance of legislative history, a court may

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[4] Section 2 (3) of the Act defines the term "employee" as follows:

"The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined." 29 U. S. C. § 152 (3).

Supervisory employees are expresssly excluded from the protections of the Act. That term is defined in § 2 (11):

"The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment." 29 U. S. C. § 152 (11).

accord great weight to the longstanding interpretation placed on a statute by an agency charged with its administration.[5] This is especially so where Congress has re-enacted the statute without pertinent change.[6] In these circumstances, congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress.[7] We have also recognized that subsequent legislation declaring the intent of an earlier statute is entitled to significant weight.[8] Application of these principles leads us to conclude, as did the Court of Appeals, that Congress intended to exclude from the protections of the Act all employees properly classified as "managerial."

A

The Wagner Act, 49 Stat. 449, did not expressly mention the term "managerial employee." After the Act's passage, however, the Board developed the concept of "managerial employee" in a series of cases involving the appropriateness of bargaining units. The first cases established that "managerial employees" were not to be included in a unit with rank-and-file employees. In

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[5] *Red Lion Broadcasting Co.* v. *FCC*, 395 U. S. 367, 381 (1969); *Zemel* v. *Rusk*, 381 U. S. 1, 11–12 (1965); *Udall* v. *Tallman*, 380 U. S. 1, 16–18 (1965); *Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 315 (1933).

[6] *Zemel* v. *Rusk*, *supra*, at 11–12; *Commissioner* v. *Noel Estate*, 380 U. S. 678, 682 (1965); *NLRB* v. *Gullett Gin Co.*, 340 U. S. 361, 365–366 (1951); *Helvering* v. *R. J. Reynolds Tobacco Co.*, 306 U. S. 110, 114–115 (1939); *Norwegian Nitrogen Co.* v. *United States*, *supra*, at 313.

[7] *Zemel* v. *Rusk*, *supra*, at 11–12; *Costanzo* v. *Tillinghast*, 287 U. S. 341, 345 (1932); *United States* v. *Midwest Oil Co.*, 236 U. S. 459, 472–473 (1915).

[8] *Red Lion Broadcasting Co.* v. *FCC*, *supra*, at 380–381; *FHA* v. *Darlington, Inc.*, 358 U. S. 84, 90 (1958).

Freiz & Sons, 47 N. L. R. B. 43, 47 (1943), for example, the Board excluded expediters from a proposed unit of production and maintenance workers because they were "closely related to the management." Similarly, in *Spicer Mfg. Corp.*, 55 N. L. R. B. 1491, 1498 (1944), expediters were again excluded from a unit containing office, technical, clerical, and professional employees because "the authority possessed by [the expediters] to exercise their discretion in making commitments on behalf of the Company stamps them as managerial." This rationale was soon applied to buyers. See, *e. g.*, *Hudson Motor Car Co.*, 55 N. L. R. B. 509, 512 (1944); *Vulcan Corp.*, 58 N. L. R. B. 733, 736 (1944); *Barrett Division, Allied Chem. & Dye Corp.*, 65 N. L. R. B. 903, 905 (1946); *Electric Controller & Mfg. Co.*, 69 N L. R. B. 1242, 1245–1246 (1946). The Board summarized its policy on "managerial employees" in *Ford Motor Co.*, 66 N. L. R. B. 1317, 1322 (1946):

> "We have customarily excluded from bargaining units of rank and file workers executive employees who are in a position to formulate, determine and effectuate management policies. These employees we have considered and still deem to be 'managerial,' in that they express and make operative the decisions of management."

Whether the Board regarded all "managerial employees" as entirely outside the protection of the Act, as well as inappropriate for inclusion in a rank-and-file bargaining unit, is less certain. To be sure, at no time did the Board certify even a separate unit of "managerial employees" or state that such was possible. The Board was cautious, however, in determining which employees were "managerial." For example, in *Dravo Corp.*, 54 N. L. R. B. 1174, 1177 (1944), the Board excluded buyers and expediters from a unit of office and clerical em-

ployees, but reserved the question whether all such employees were to be considered "managerial":

> "This is not to say, however, that buyers and expediters are to be denied the right to self-organization and to collective bargaining under the Act. The precise relationship of the buyers and expediters to management here is not now being determined by us."

During this period the Board's policy with respect to the related but narrower category of "supervisory employees" manifested a progressive uncertainty. The Board first excluded supervisors from units of rank-and-file employees, *e. g., Mueller Brass Co.*, 39 N. L. R. B. 167, 171 (1942), but in *Union Collieries Coal Co.*, 41 N. L. R. B. 961, supplemental decision, 44 N. L. R. B. 165 (1942), it certified a separate unit composed of supervisors who were to be represented by an independent union. Shortly thereafter, in *Godchaux Sugars, Inc.*, 44 N. L. R. B. 874 (1942), the Board approved a unit of supervisors whose union was affiliated with a union of rank-and-file employees. This trend was soon halted, however, by *Maryland Drydock Co.*, 49 N. L. R. B. 733 (1943), where the Board held that supervisors, although literally "employees" under the Act, could not be organized in any unit. And in *Yale & Towne Mfg. Co.*, 60 N. L. R. B. 626, 628–629 (1945), the Board further held that time-study men, whose " 'interests and functions' " were " 'sufficiently akin to those of management,' " should neither be included in a unit with other employees, nor be established as a separate unit."

Maryland Drydock, supra, was subsequently overruled in *Packard Motor Car Co.*, 61 N. L. R. B. 4, 64 N. L. R. B. 1212 (1945), where the Board held that foremen could constitute an appropriate unit for collective bargaining. The Board's position was upheld 5–4 by this Court in

Packard Co. v. *NLRB*, 330 U. S. 485 (1947). In view of the subsequent legislative reversal of the *Packard* decision, the dissenting opinion of MR. JUSTICE DOUGLAS is especially pertinent. *Id.*, at 493. He stated:

> "The present decision . . . tends to obliterate the line between management and labor. It lends the sanctions of federal law to unionization at all levels of the industrial hierarchy. It tends to emphasize that the basic opposing forces in industry are not management and labor but the operating group on the one hand and the stockholder and bondholder group on the other. The industrial problem as so defined comes down to a contest over a fair division of the gross receipts of industry between these two groups. The struggle for control or power between management and labor becomes secondary to a growing unity in their common demands on ownership.
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> "I do not believe this is an exaggerated statement of the basic policy questions which underlie the present decision. For if foremen are 'employees' within the meaning of the National Labor Relations Act, so are vice-presidents, managers, assistant managers, superintendents, assistant superintendents—indeed, all who are on the payroll of the company, including the president; all who are commonly referred to as the management, with the exception of the directors. If a union of vice-presidents applied for recognition as a collective bargaining agency, I do not see how we could deny it and yet allow the present application. But once vice-presidents, managers, superintendents, foremen all are unionized, management and labor will become more of a solid phalanx than separate factions in warring camps.
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> "[I]f Congress, when it enacted the National Labor

Relations Act, had in mind such a basic change in industrial philosophy, it would have left some clear and unmistakable trace of that purpose. But I find none." *Id.*, at 494–495.

MR. JUSTICE DOUGLAS also noted that the Wagner Act was intended to protect "laborers" and "workers" whose right to organize and bargain collectively had not been recognized by industry, resulting in strikes, strife, and unrest. By contrast, there was no similar history with respect to foremen, managers, superintendents, or vice presidents. *Id.*, at 496–497. Furthermore, other legislation indicated that where Congress desired to include managerial or supervisory personnel in the category of employees, it did so expressly. See, *e. g.*, Railway Labor Act of 1926, 44 Stat. 577, 45 U. S. C. § 151; Merchant Marine Act, 1936, as amended, 52 Stat. 953, 46 U. S. C. § 1101 *et seq.*; Social Security Act, § 1101, 49 Stat. 647.

B

The *Packard* decision was a major factor in bringing about the Taft-Hartley Act of 1947, 61 Stat. 136. The House bill, H. R. 3020, 80th Cong., 1st Sess. (1947),[9] provided for the exclusion of

[9] Section 2 (12) of the House bill defined the term "supervisor" as follows:

"The term 'supervisor' means any individual—

"(A) who has authority, in the interest of the employer—

"(i) to hire, transfer, suspend, lay off, recall, promote, demote, discharge, assign, reward, or discipline any individuals employed by the employer, or to adjust their grievances, or to effectively recommend any such action; or

"(ii) to determine, or make effective recommendations with respect to, the amount of wages earned by any individuals employed by the employer, or to apply, or to make effective recommendations with respect to the application of, the factors upon the basis of which the wages of any individuals employed by the employer are deter-

"supervisors," a category broadly defined to include any individual who had authority to hire, transfer, promote, discharge, reward, or discipline other employees or effectively to recommend such action. It also excluded (i) those who had authority to determine or effectively recommend the amount of wages earned by other employees; (ii) those employed in labor relations, personnel, and employment departments, as well as police and time-study personnel; and (iii) confidential employees. The Senate version of the bill, S. 1126, 80th Cong., 1st Sess. (1947),[10] also excluded supervisors, but defined that category more narrowly than the House version, distinguishing between "straw bosses, leadmen, set-up men, and other minor supervisory employees, on the one hand, and the supervisor vested with such genuine management

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mined, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the exercise of independent judgment;

"(B) who is employed in labor relations, personnel, employment, police, or time-study matters or in connection with claims matters of employees against employers, or who is employed to act in other respects for the employer in dealing with other individuals employed by the employer, or who is employed to secure and furnish to the employer information to be used by the employer in connection with any of the foregoing; or

"(C) who by the nature of his duties is given by the employer information that is of a confidential nature, and that is not available to the public, to competitors, or to employees generally, for use in the interest of the employer."

[10] Section 2 (11) of the Senate bill contained the following definition of the term "supervisor":

"The term 'supervisor' means any individual having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or to adjust their grievances, or effectively to recommend such action if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

prerogatives as the right to hire or fire, discipline, or make effective recommendations with respect to such action." S. Rep. No. 105, 80th Cong., 1st Sess., 4 (1947). It was the Senate's view that employees such as "straw bosses," who had only minor supervisory duties, should be included within the Act's protections.

Significantly, both the House Report and the Senate Report voiced concern over the Board's broad reading of the term "employee" to include those clearly within the managerial hierarchy. Focusing on MR. JUSTICE DOUGLAS' dissent in *Packard*, the Senate Report specifically mentioned that even vice presidents might be unionized under the Board's decision. *Ibid.* It also noted that unionization of supervisors had hurt productivity, increased the accident rate, upset the balance of power in collective bargaining, and tended to blur the line between management and labor. *Id.*, at 4–5. The House Report echoed the concern for reduction of industrial output and noted that unionization of supervisors had deprived employers of the loyal representations to which they were entitled.[11] And in criticizing the

[11] The report also makes evident that Congress was concerned with more than just the possibility of a conflict of interest in labor relations if supervisors were unionized:

"Supervisors are management people. They have distinguished themselves in their work. They have demonstrated their ability to take care of themselves without depending upon the pressure of collective action. No one forced them to become supervisors. They abandoned the 'collective security' of the rank and file voluntarily, because they believed the opportunities thus opened to them to be more valuable to them than such 'security.' It seems wrong, and it is wrong, to subject people of this kind, who have demonstrated their initiative, their ambition and their ability to get ahead, to the leveling processes of seniority, uniformity and standardization that the Supreme Court recognizes as being fundamental principles of unionism. (*J. I. Case Co.* v. *National Labor Relations Board*, 321 U. S. 332 (1944).) It is wrong for the foremen, for it discourages

Board's expansive reading of the Act's definition of the term "employees," the House Report noted that "[w]hen Congress passed the Labor Act, we were concerned, as we said in its preamble, with the welfare of 'workers' and 'wage earners,' not of the boss." H. R. Rep. No. 245, 80th Cong., 1st Sess., 13 (1947).

The Conference Committee adopted the Senate version of the bill. H. R. Conf. Rep. No. 510, 80th Cong., 1st Sess., 35 (1947). The Conference Committee Report explained:

> "The conference agreement, in the definition of 'supervisor,' limits such term to those individuals treated as supervisors under the Senate amendment. In the case of persons working in labor relations, personnel and employment departments, it was not thought necessary to make specific provision, as was done in the House bill, since the Board has treated, and presumably will continue to treat, such persons as outside the scope of the act. This is the prevailing Board practice with respect to such people as confidential secretaries as well, and it was not the intention of the conferees to alter this practice in any respect. The conference agreement does not treat time-study personnel or guards as supervisors, as did the House bill. Since, however, time-study employees may qualify as professional personnel, the special provisions of the Senate amendment . . . applicable with respect to professional employees will cover many of this category. In the case of guards, the conference agreement does not permit the

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the things in them that made them foremen in the first place. For the same reason, that it discourages those best qualified to get ahead, it is wrong for industry, and particularly for the future strength and productivity of our country." H. R. Rep. No. 245, 80th Cong., 1st Sess., 16–17 (1947).

certification of a labor organization as the bargaining representative of guards if it admits to membership, or is affiliated with any organization that admits to membership, employees other than guards." *Id.*, at 35–36.

The legislative history of the Taft-Hartley Act of 1947 may be summarized as follows. The House wanted to include certain persons within the definition of "supervisors," such as straw bosses, whom the Senate believed should be protected by the Act. As to these persons, the Senate's view prevailed. There were other persons, however, who both the House and the Senate believed were plainly outside the Act. The House wanted to make the exclusion of certain of these persons explicit. In the conference agreement, representatives from both the House and the Senate agreed that a specific provision was unnecessary since the Board had long regarded such persons as outside the Act. Among those mentioned as impliedly excluded were persons working in "labor relations, personnel and employment departments," and "confidential employees." But assuredly this did not exhaust the universe of such excluded persons. The legislative history strongly suggests that there also were other employees, much higher in the managerial structure, who were likewise regarded as so clearly outside the Act that no specific exclusionary provision was thought necessary. For example, in its discussion of confidential employees, the House Report noted that "[m]ost of the people who would qualify as 'confidential' employees are *executives and are excluded from the act in any event.*" H. R. Rep. No. 245, p. 23 (emphasis added).[12] We think

[12] The report stated in reference to "confidential employees":

"These are people who receive from their employers information that not only is confidential but also that is not available to the public, or to competitors, or to employees generally. *Most of the*

the inference is plain that "managerial employees" were paramount among this impliedly excluded group. The Court of Appeals in the instant case put the issue well:

> "Congress recognized there were other persons so much more clearly 'managerial' that it was inconceivable that the Board would treat them as employees. Surely Congress could not have supposed that, while 'confidential secretaries' could not be organized, their bosses could be. In other words, Congress failed to enact the portion of MR. JUSTICE DOUGLAS' *Packard* dissent relating to the organization of executives, not because it disagreed but because it deemed this unnecessary." 475 F. 2d, at 491–492.[13] (Footnote omitted.)

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people who would qualify as 'confidential' employees are executives and are excluded from the act in any event.

"The Board, itself, normally excludes from bargaining units confidential clerks and secretaries to such people as these." *Ibid.* (Emphasis added.)

In 1946 in *Ford Motor Co.*, 66 N. L. R. B. 1317, 1322, the Board had narrowed its definition of "confidential employees" to embrace only those who exercised " 'managerial' functions in the field of labor relations." The discussion of "confidential employees" in both the House and Conference reports, however, unmistakably refers to that term as defined in the House bill, which was not limited just to those in "labor relations." Thus, although Congress may have misconstrued recent Board practice, it clearly thought that the Act did not cover "confidential employees" even under a broad definition of that term.

[13] The dissenting opinion first asserts that the Act is "very plain on its face" and covers all employees except those expressly excluded (*post*, at 297), but later concedes that the "Conference Committee implied that certain groups of employees were to be excluded." (*Post*, at 305.) The dissent then argues that "managerial employees" were not among those impliedly excluded because "no such explicit direction was set forth." *Ibid.* This overlooks the fact that, as in the case of "confidential employees" and those working in "labor relations, personnel and employment departments," no explicit ex-

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Following the passage of the Taft-Hartley Act, the Board itself adhered to the view that "managerial employees" were outside the Act. In *Denver Dry Goods*, 74 N. L. R. B. 1167, 1175 (1947), assistant buyers, who

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clusionary provision was necessary in 1947 because the Board had never approved the organization of "managerial employees" in either a separate unit or as part of a rank-and-file unit. Indeed, every prior Board decision had resulted in the exclusion of such employees as "managerial."

Moreover, it cannot be denied that Congress thought that "executives" were excluded from the Act, for the House Report so stated in express terms. See n. 12, *supra*. And the congressional debates, along with the Senate Report, evinced a concern over the possible extension of the Act to cover corporate vice presidents and other executives who were part of management. See, *e. g.*, 93 Cong. Rec. 3443, 4136, 5014.

In addition, the dissent completely ignores the fundamental change in industrial philosophy which would be accomplished through unionization of "managerial employees." As Mr. Justice Douglas explained in his *Packard* dissent, the Wagner Act was designed to protect "laborers" and "workers," not vice presidents and others clearly within the managerial hierarchy. Extension of the Act to cover true "managerial employees" would indeed be revolutionary, for it would eviscerate the traditional distinction between labor and management. If Congress intended a result so drastic, it is not unreasonable to expect that it would have said so expressly.

The dissent also relies upon the specific inclusion of "professional employees" within the Act to support its assertion that "managerial employees" were to be similarly treated. *Post*, at 297–298. See 29 U. S. C. § 152 (12). "Professional employees," however, are plainly not the same thing as "managerial employees." As the Conference Committee Report explained, the term "professional employees" refers to "such persons as legal, engineering, scientific and medical personnel together with their junior professional assistants." H. R. Conf. Rep. No. 510, 80th Cong., 1st Sess., 36. In contrast to "managerial employees," they are not defined in terms of their authority "to formulate, determine and effectuate management policies." *Ford Motor Co.*, 66 N. L. R. B., at 1322.

were required to set good sales records as examples to sales employees, to assist buyers in the selection of merchandise, and to assume the buyer's duties when the latter was not present, were excluded by the Board on the ground that "the interests of these employees are more closely identified with those of management." The Board reiterated this reading of the Act in *Palace Laundry Dry Cleaning*, 75 N. L. R. B. 320, 323 n. 4 (1947):

> "The determination of 'managerial,' like the determination of 'supervisory,' is to some extent necessarily a matter of the degree of authority exercised. We have in the past, and before the passage of the recent amendments to the Act, recognized and defined as 'managerial' employees, executives who formulate and effectuate management policies by expressing and making operative decisions of their employer, and have excluded such managerial employees from bargaining units. We believe that the Act, as amended, contemplates the continuance of this practice." (Citations omitted.)

Buyers and assistant buyers were again excluded in *Denton's, Inc.*, 83 N. L. R. B. 35, 37 (1949), because their "interests . . . are more closely identified with management . . . ." And in *American Locomotive Co.*, 92 N. L. R. B. 115, 116–117 (1950), the Board held that buyers could neither be included in a unit of office and clerical employees nor placed in a separate unit, stating:

> "The Employer maintains that the buyers are representatives of management. As it appears that the buyers are authorized to make substantial purchases for the Employer, we find that they are representatives of management, and as such may not be accorded bargaining rights under the Act."

Buyers, who were authorized to bind the employer without prior approval, were also excluded from a unit in

Curtiss-Wright Corp., 103 N. L. R. B. 458, 464 (1953), because "they are representatives of management and as such may not be accorded bargaining rights under the Act."

Finally, in *Swift & Co.*, 115 N. L. R. B. 752, 753–754 (1956), the Board reaffirmed its long-held understanding of the scope of the Act. In refusing to approve a unit of procurement drivers who were found to be representative of management, the Board declared:

> "It was the clear intent of Congress to exclude from the coverage of the Act all individuals allied with management. Such individuals cannot be deemed to be employees for the purposes of the Act. Accordingly, we reaffirm the Board's position that representatives of management may not be accorded bargaining rights under the Act . . . ." (Footnotes omitted.)

Until its decision in *North Arkansas* in 1970, the Board consistently followed this reading of the Act.[14] It never

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[14] See, *e. g.*, *Eastern Camera & Photo Corp.*, 140 N. L. R. B. 569, 571 (1963); *AFL–CIO*, 120 N. L. R. B. 969, 973 (1958); *General Tel. Co. of Ohio*, 112 N. L. R. B. 1225, 1229 (1955).

The cases excluding buyers or these exercising buyers' functions from other units are legion. See, *e. g.*, *Ed's Foodland of Springfield, Inc.*, 159 N. L. R. B. 1256, 1260 (1966); *Albuquerque Div., ACF Ind., Inc.*, 145 N. L. R. B. 403, 414–415 (1963); *Weaver Motors*, 123 N. L. R. B. 209, 215–216 (1959); *Kearney & Trecker Corp.*, 121 N. L. R. B. 817, 822 (1958); *Temco Aircraft Corp.*, 121 N. L. R. B. 1085, 1089 (1958); *Federal Tel. & Radio Co.*, 120 N. L. R. B. 1652, 1653–1654 (1958).

Surprisingly, the dissent maintains that the Board "actually held only twice" that "managerial employees" were not covered by the Act. *Post*, at 309. This is difficult to reconcile with the undisputed fact that until its decision in *North Arkansas* the Board had never even certified a separate unit of "managerial employees" and had stated in case after case that managerial employees were not to be accorded bargaining rights under the Act. *E. g.*, *Palace Laundry*

certified any unit of "managerial employees," separate or otherwise, and repeatedly stated that it was Congress' intent that such employees not be accorded bargaining rights under the Act. And it was this reading which was permitted to stand when Congress again amended the Act in 1959. 73 Stat. 519.

The Board's exclusion of "managerial employees" defined as those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer," [15] has also been approved by courts without exception. See, *e. g., Westinghouse Electric Corp.* v. *NLRB*, 424 F. 2d 1151, 1158 (CA7), cert. denied, 400 U. S. 831 (1970); *Illinois State Journal-Register, Inc.* v. *NLRB*, 412 F. 2d 37, 41 (CA7 1969); *Continental Insurance Co.* v. *NLRB*, 409 F. 2d 727, 730 (CA2), cert. denied, 396 U. S. 902 (1969); *Retail Clerks International Assn.* v. *NLRB*, 125 U. S. App. D. C. 63, 65–66, 366 F. 2d 642, 644–645 (1966) (Burger, J.), cert. denied, 386 U. S. 1017 (1967); [16] *International Ladies'*

Dry Cleaning, 75 N. L. R. B. 320 (1947); *American Locomotive Co.*, 92 N. L. R. B. 15 (1950); *Curtiss-Wright Corp.*, 103 N. L. R. B. 458 (1953); *Swift & Co.*, 115 N. L. R. B. 752 (1956), and cases cited above.

[15] *Palace Laundry Dry Cleaning, supra*, at 323 n. 4. See *Ford Motor Co.*, 66 N. L. R. B., at 1322.

[16] In *Retail Clerks International Assn.* v. *NLRB, supra*, MR. CHIEF JUSTICE (then Circuit Judge) BURGER explained the Board's policy on "managerial employees":

"The Board also excludes from the protections of the Act, as *managerial employees*, 'those who formulate, determine, and effectuate an employer's policies,' *AFL–CIO*, [120 N. L. R. B. 969, 973 (1958)], and those who have discretion in the performance of their jobs, but not if the discretion must conform to an employer's established policy, Eastern Camera and Photo Corp., 140 N. L. R. B. 569, 571 (1963) (store managers who could set prices are not managerial). The rationale for this Board policy, though unarticulated, seems to be the reasonable belief that Congress intended to ex-

Garment Workers' Union v. *NLRB*, 339 F. 2d 116, 123 (CA2 1964) (Marshall, J.).[17] And in *NLRB* v. *North Arkansas Electric Cooperative, Inc.*, 446 F. 2d 602 (1971), the Eighth Circuit reviewed the history of the Act and specifically disapproved the Board's departure from its earlier position.

D

In sum, the Board's early decisions, the purpose and legislative history of the Taft-Hartley Act of 1947, the Board's subsequent and consistent construction of the Act for more than two decades, and the decisions of the courts of appeals all point unmistakably to the conclusion that "managerial employees" are not covered by the Act.[18] We agree with the Court of Appeals below that the Board "is not now free" to read a new and more restrictive meaning into the Act. 475 F. 2d, at 494.

In view of our conclusion, the case must be remanded to permit the Board to apply the proper legal standard

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clude from the protection of the Act those who comprised a part of 'management' or were allied with it on the theory that they were the one[s] from whom the workers needed protection." 366 F. 2d, at 645. (Emphasis added.)

[17] In *International Ladies' Garment Workers' Union* v. *NLRB*, *supra*, MR. JUSTICE (then Circuit Judge) MARSHALL explained that "[a]lthough the Act makes no special provision for 'managerial employees,' under a Board policy of long duration, this category of personnel has been excluded from the protection of the Act." 339 F. 2d, at 123.

[18] The contrary interpretation of the Act urged by the dissent would have far-reaching results. Although a shop foreman would be excluded from the Act, a wide range of executives would be included. A major company, for example, may have scores of executive officers who formulate and effectuate management policies, yet have no supervisory responsibility or identifiable conflict of interest in labor relations. If Congress intended the unionization of such executives, it most certainly would have made its design plain. See n. 13, *supra*.

in determining the status of these buyers.[19] *SEC* v. *Chenery Corp.*, 318 U. S. 80, 85 (1943); *FTC* v. *Sperry & Hutchinson Co.*, 405 U. S. 233, 249 (1972). We express no opinion as to whether these buyers fall within the category of "managerial employees." [20]

III

The Court of Appeals also held that, although the Board was not precluded from determining that buyers or some types of buyers were not "managerial employees," it could do so only by invoking its rulemaking procedures under § 6 of the Act, 29 U. S. C. § 156.[21] We disagree.

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[19] The Board has had ample experience in defining the term "managerial" in the manner which we think the Act contemplates. See, *e. g.*, *Eastern Camera & Photo Corp.*, *supra*, at 571. Of course, the specific job title of the employees involved is not in itself controlling. Rather, the question whether particular employees are "managerial" must be answered in terms of the employees' actual job responsibilities, authority, and relationship to management.

[20] To be sure, it would also be appropriate for the Board to exclude employees from a unit on the ground that their participation in a labor organization would create a conflict of interest with their job responsibilities. *New England Telephone*, 90 N. L. R. B. 639 (1950). See also *Retail Clerks International Assn.* v. *NLRB*, 125 U. S. App. D. C., at 65–66, 366 F. 2d, at 644–645. In this respect, respondent has suggested that it was never afforded fair notice and an opportunity to introduce evidence relating specifically to the possibility of a conflict of interest in labor relations. Tr. of Oral Arg. 33–35, 43, 47. At the representation hearing, the hearing officer did not indicate that the conflict-of-interest standard was relevant, and respondent proceeded on the assumption that the only question was whether the buyers were "managerial employees." App. 8, 83.

The present record may well be adequate for purposes of this determination. However, if new and relevant information on this point is tendered on remand, the Board should consider reopening the record for purposes of its admission.

[21] Section 6 provides:

"The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the Administrative Pro-

At the outset, the precise nature of the present issue must be noted. The question is not whether the Board should have resorted to rulemaking, or in fact improperly promulgated a "rule," when in the context of the prior representation proceeding it held that the Act covers all "managerial employees" except those meeting the new "conflict of interest in labor relations" touchstone. Our conclusion that the Board applied the wrong legal standard makes consideration of that issue unnecessary. Rather, the present question is whether on remand the Board must invoke its rulemaking procedures if it deter-

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cedure Act, such rules and regulations as may be necessary to carry out the provisions of this subchapter." 29 U. S. C. § 156.

The Administrative Procedure Act (APA) defines "rule" as "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy. . . ." 5 U. S. C. § 551 (4). The rulemaking requirements include publication in the Federal Register of notice of the proposed rulemaking and hearing; an opportunity for interested persons to participate; a statement of the basis and purpose of the proposed rule; and publication in the Federal Register of the rule as adopted.

The APA defines "adjudication" as "agency process for the formulation of an order," and "order" is defined as "the whole or a part of a final disposition whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing." 5 U. S. C. §§ 551 (7), (6). Proceedings for "the certification of worker representatives" are exempted from the Act's procedural requirements for an "adjudication." 5 U. S. C. §§ 554 (a)(6), 556 (a), 557 (a).

Sections 9 (c)(1) and (2) of the National Labor Relations Act (NLRA) empower the Board to investigate petitions involving questions of unit representation, to conduct hearings on such petitions, to direct representation elections, and to certify the results thereof. 29 U. S. C. §§ 159 (c)(1) and (2). Board determinations on such representation questions would appear to constitute "orders" within the meaning of the APA. See 5 U. S. C. §§ 551 (6), (7).

The NLRA does not specify in what instances the Board must resort to rulemaking.

Justice Fortas, joined by The Chief Justice, MR. JUSTICE STEWART, and MR. JUSTICE WHITE, recognized that "[a]djudicated cases may and do . . . serve as vehicles for the formulation of agency policies, which are applied and announced therein," and that such cases "generally provide a guide to action that the agency may be expected to take in future cases." *NLRB* v. *Wyman-Gordon Co.*, *supra*, at 765–766. The concurring opinion of Mr. Justice Black, joined by MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL, also noted that the Board had both adjudicative and rulemaking powers and that the choice between the two was "within its informed discretion." *Id.*, at 772.

The views expressed in *Chenery II* and *Wyman-Gordon* make plain that the Board is not precluded from announcing new principles in an adjudicative proceeding and that the choice between rulemaking and adjudication lies in the first instance within the Board's discretion. Although there may be situations where the Board's reliance on adjudication would amount to an abuse of discretion or a violation of the Act, nothing in the present case would justify such a conclusion. Indeed, there is ample indication that adjudication is especially appropriate in the instant context. As the Court of Appeals noted, "[t]here must be tens of thousands of manufacturing, wholesale and retail units which employ buyers, and hundreds of thousands of the latter." 475 F. 2d, at 496. Moreover, duties of buyers vary widely depending on the company or industry. It is doubtful whether any generalized standard could be framed which would have more than marginal utility. The Board thus has reason to proceed with caution, developing its standards in a case-by-case manner with attention to the specific character of the buyers' authority and duties in each company. The Board's judgment that adjudication best serves this purpose is entitled to great weight.

The possible reliance of industry on the Board's past decisions with respect to buyers does not require a different result. It has not been shown that the adverse consequences ensuing from such reliance are so substantial that the Board should be precluded from reconsidering the issue in an adjudicative proceeding. Furthermore, this is not a case in which some new liability is sought to be imposed on individuals for past actions which were taken in good-faith reliance on Board pronouncements. Nor are fines or damages involved here. In any event, concern about such consequences is largely speculative, for the Board has not yet finally determined whether these buyers are "managerial."

It is true, of course, that rulemaking would provide the Board with a forum for soliciting the informed views of those affected in industry and labor before embarking on a new course. But surely the Board has discretion to decide that the adjudicative procedures in this case may also produce the relevant information necessary to mature and fair consideration of the issues. Those most immediately affected, the buyers and the company in the particular case, are accorded a full opportunity to be heard before the Board makes its determination.

The judgment of the Court of Appeals is therefore affirmed in part and reversed in part and the cause remanded to that court with directions to remand to the Board for further proceedings in conformity with this opinion.

It is so ordered.

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL join, dissenting in part.

I concur in Part III of the Court's opinion insofar as it holds that the Board was not required to resort to rulemaking in deciding this case, but I dissent from its hold-

ing in Part II that managerial employees as a class are not "employees" within the meaning of the Labor Management Relations Act.

Section 7 of the Act, 29 U. S. C. § 157, provides that "[e]mployees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing . . . ." Section 8 (a)(1), 29 U. S. C. § 158 (a)(1), makes it an unfair labor practice to interfere with the rights guaranteed in § 7, and under § 8 (a)(5), 29 U. S. C. § 158 (a)(5), it is an unfair practice for the employer to refuse to bargain collectively with representatives of his "employees." For the purposes of the foregoing sections, the term "employee" as defined in § 2 (3) of the Act, means "any employee" of the employer,

> "but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act . . . ." 29 U. S. C. § 152 (3).

The issue in this case is whether the term "employee" excludes not only those specifically excluded by § 2 but also the broad category of "managerial" employees who, although literally "employees" of the employer and not expressly excluded by § 2, are nevertheless not to be considered employees for the purposes of the Act because they make and implement managerial policies. The Court holds that no managerial employee is an employee for the purposes of the Act. I cannot agree with this conclusion.

The Act is very plain on its face—"any employee," with specified exclusions, is entitled to the benefits of the Act. Each of the exclusions is a narrow and precisely defined class, and none of them mentions managerial employees. "Supervisors" are excluded, but a precise definition of that class, much narrower than the class of managerial employees, is provided in § 2 (11):

> "any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." 29 U. S. C. § 152 (11).

Without more, it could not be concluded that Congress meant to exclude a whole category of employees in addition to those expressly excepted in § 2. To infer that all managerial employees are not employees for purposes of the Act because a specified managerial subgroup, supervisors, was expressly excluded, is unwarranted, at least where Congress was careful to define precisely what employees were within the scope of the supervisory exclusion.

What is more, Congress in § 2 (12), 29 U. S. C. § 152 (12), has defined a special subclass of professional employees having special skills and duties "involving the consistent exercise of discretion and judgment in" the performance of their work. These employees are obviously "employees" for the purposes of the Act; and in § 9, 29 U. S. C. § 159, after investing the Board with the powers necessary to decide the units appropriate for collective bargaining, it is provided

that the Board shall not hold any bargaining unit to be appropriate "if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit." It is apparent, it seems to me, that there are many professional employees who would qualify as managerial employees; yet the Act clearly treats them as employees for purposes of the Act and Congress assumed they would have full organizational and bargaining rights unless it was provided otherwise in accordance with congressional desires. Hence § 9 (b).

Insofar as the face of the Act is concerned, and as compared with an across-the-board exclusion of "managerial" employees, the present ruling of the Board, which excludes only those managerial employees whose work may involve them in a conflict of interest if they are permitted to bargain collectively, is a far narrower exclusion adhering much more closely to the rationale of the supervisory exclusion and to the apparent intent of Congress. The Court nevertheless not only holds that the term employee *may* be construed to exclude managerial employees but also that it *must* be so construed. No narrower exclusion, it is said, in addition to those expressly provided for, will satisfy the Act.

Although it would appear to be a difficult and questionable feat to rewrite the statute so substantially, the Court purports to find license for its result in the legislative history of the 1947 amendments to the Act, read in the light of previous and subsequent Board and court decisions. It is true that the exclusion of supervisors from the definition of employees first occurred in 1947, but, with all respect, I find no basis in the history of these amendments, read in the light of prior Board cases, for concluding that Congress intended to exclude all

managerial employees, in addition to supervisors, from the benefits of the Act.

As I understand its decisions, the Board at no time prior to 1947 completely excluded the broad category of managerial employees from the class of employees protected by the Act. The Court concedes that the Board's cases during this period involved only the exclusion of managerial employees from bargaining units of rank-and-file workers. Some of the Board's statements may have been ambiguous, but no Board case held or had occasion to hold that managerial employees as a group would not be protected by the Act. As the Court acknowledges, the Board, in one decision excluding buyers and expediters from a unit of office and clerical employees, pointedly expressed the caveat that "[t]his is not to say, however, that buyers and expediters are to be denied the right to self-organization and to collective bargaining under the Act." *Dravo Corp.*, 54 N. L. R. B. 1174, 1177 (1944). In *Hudson Motor Car Co.*, 55 N. L. R. B. 509, 512 (1944), where the Board excluded buyers from a bargaining unit of office and clerical employees, the reason given for the exclusion was "that their duties are closely allied to management, differing materially from those of the other clerical employees." And in *Vulcan Corp.*, 58 N. L. R. B. 733, 736 (1944), the Board excluded a buyer from a production and maintenance employees' unit, not because a managerial employee could not be accorded bargaining rights, but "[b]ecause of the responsibility of his position and his peculiar relationship to management, and in view of the fact that his interests are apparently different from those of the production and maintenance employees." This line of Board decisions addressed the question whether certain managerial employees had sufficient community of interest with rank-and-file employees to be included in the same bargaining unit with them, and the Board was exercising its power to designate

appropriate bargaining units under § 9. It is clear that the Board at no time held managerial employees to be outside the scope of the Act during the period prior to the Taft-Hartley amendments.

The Board's position with respect to supervisors, as a class, vacillated during this time, the Board first excluding supervisors from rank-and-file units but recognizing units confined to supervisory employees, then refusing to recognize any bargaining units of supervisors and finally returning to its earlier rule. But even when the Board determined for a short period that supervisors should not be permitted to organize either with other employees or in separate units, it never went as far as to hold supervisors not to be "employees" under the Act. This was the Court's understanding of the Board's position in *Packard Co.* v. *NLRB*, 330 U. S. 485, 492 n. 3 (1947), the very case which prompted the 80th Congress to go further than the Board had ever gone and exclude supervisors entirely from the category of employees accorded bargaining rights under the Act.[1] In *Maryland Drydock Co.*, 49 N. L. R. B. 733, 738, 740 (1943), the Board was "no longer convinced that from the mere determina-

[1] "The Board had held that supervisory employees may organize in an independent union, *Union Collieries Coal Co.*, 41 N. L. R. B. 961, 44 N. L. R. B. 165; and in an affiliated union, *Godchaux Sugars, Inc.*, 44 N. L. R. B. 874. Then it held that there was no unit appropriate to the organization of supervisory employees. *Maryland Drydock Co.*, 49 N. L. R. B. 733; *Boeing Aircraft Co.*, 51 N. L. R. B. 67; *Murray Corp. of America*, 51 N. L. R. B. 94; *General Motors Corp.*, 51 N. L. R. B. 457. In this case, 61 N. L. R. B. 4, 64 N. L. R. B. 1212; in *L. A. Young Spring & Wire Corp.*, 65 N. L. R. B. 298; *Jones & Laughlin Steel Corp.*, 66 N. L. R. B. 386, 71 N. L. R. B. 1261; and in *California Packing Corp.*, 66 N. L. R. B. 1461, the Board re-embraced its earlier conclusions with the same progressive boldness it had shown in the *Union Collieries* and *Godchaux Sugars* cases. In none of this series of cases did the Board hold that supervisors were not employees. See *Soss Manufacturing Co.*, 56 N. L. R. B. 348."

tion that a supervisor is an employee it follows that supervisors may constitute appropriate bargaining units" because "the benefits which supervisory employees might achieve through being certified as collective-bargaining units would be outweighed not only by the dangers inherent in the commingling of management and employee functions, but also in its possible restrictive effect upon the organizational freedom of rank and file employees." Shortly thereafter, the Board, faced with a claim by the employer that foremen are not employees within the meaning of the Act, did not address this possible ground of decision but held instead that it was "not persuaded that the factors militating against the establishment of units of supervisory employees, set forth in . . . the *Maryland Drydock* case, are obviated by the circumstance that the union seeking to represent such employees is an independent, unaffiliated union." *General Motors Corp.*, 51 N. L. R. B. 457, 460 (1943). Moreover, the Board held in *Soss Mfg. Co.*, 56 N. L. R. B. 348 (1944), that while a bargaining unit of supervisory employees might not be appropriate, a supervisor, like other employees, was nonetheless protected against an unfair labor practice: "We conclude that supervisors are 'employees' and that supervisory status does not by its own force remove an employee from the protection of Section 8 (1) and (3)" of the Act. *Id.*, at 353. Ultimately, in the *Packard* cases, 61 N. L. R. B. 4, 64 N. L. R. B. 1212 (1945), the Board reverted to its earlier rule that bargaining units of supervisors were entitled to recognition under the Act as long as they included no rank-and-file members.

When Congress undertook to amend the Act following this Court's decision in *Packard* upholding the Board's inclusion of supervisors as employees under the Act, it was acting in light of a renewed Board policy to

permit supervisory employees to organize in separate units under the mantle of the Act's protection, an enduring Board policy not to exclude supervisors from the statutory definition of employees, and a further policy which excluded managerial employees from rank-and-file units but had never denied them the right to establish separate bargaining units or placed them outside the Act's definition of "employee." The amendments adopted by Congress in 1947 in light of this pattern of Board practice clearly intended to do away with the *Packard* decision approving the Board's authority to grant recognition to unions of supervisors. The House and the Senate both proposed to exclude supervisors from the individuals defined as employees for purposes of the Act. The Senate definition of "supervisor" was limited to individuals with authority, in the employer's interest, to take or recommend action involving the employment of other employees, if the exercise of such authority required the use of independent judgment, S. 1126 § 2 (11). But the proposed House definition would also have identified as excluded "supervisors" (a) those who could determine or effectively recommend the wages to be paid other employees, (b) employees with responsibility in the area of labor relations, personnel, employment, police, or time-study matters, and (c) confidential employees, H. R. 3020 § 2 (12). Neither of these proposals sought to exclude in express terms the entire category of "managerial employees," *i. e.*, those who are in a position to formulate, determine, and effectuate management policies beyond the area of labor relations, whether by defining such persons as "supervisors" or by proposing a separate exclusion for "managerial employees." Such a step could easily have been taken had Congress intended to exclude these individuals from the protection of the Act. But it was not, despite the

fact that the Board had recently considered whether certain employees should be denied organizational rights, either because they were supervisory or, separately, because their job responsibilities involved the exercise of managerial discretion. See, *e. g.*, *Ford Motor Co.*, 66 N. L. R. B. 1317, 1322 (1946); *Electric Controller & Mfg. Co.*, 69 N. L. R. B. 1242 (1946). One would expect that if Congress had intended to eliminate the Board's authority to accord bargaining rights to managerial employees, as well as supervisors, it would have said so, particularly as Board practice had treated these two categories separately and differently.

The Court would fill this gap by referring to the Conference Committee Report explaining the adoption of the narrower Senate definition of excluded "supervisors." This report is indeed instructive, but it indicates even more clearly, in my opinion, that Congress did not contemplate the exclusion of managerial employees from the coverage of the Act:

> "The conference agreement, in the definition of 'supervisor,' limits such term to those individuals treated as supervisors under the Senate amendment. In the case of persons working in labor relations, personnel and employment departments, it was not thought necessary to make specific provision, as was done in the House bill, since the Board has treated, and presumably will continue to treat, such persons as outside the scope of the act. This is the prevailing Board practice with respect to such people as confidential employees as well, and it was not the intention of the conferees to alter this practice in any respect. The conference agreement does not treat time-study personnel or guards as supervisors, as did the House bill. Since, however, time-study employees may qualify as professional personnel,

> the special provisions of the Senate amendment . . . applicable with respect to professional employees will cover many in this category. In the case of guards, the conference agreement does not permit the certification of a labor organization as the bargaining representative of guards if it admits to membership, or is affiliated with any organization that admits to membership, employees other than guards. The provision dealing with the certification of bargaining units for guards is dealt with in section 9 (b) of the conference agreement . . . ." H. R. Conf. Rep. No. 510, 80th Cong., 1st Sess., 35–36 (1947).

The Court emphasizes that the statutory language adopted in the 1947 amendments did not expressly exclude persons working in labor relations, personnel, or employment departments, or confidential employees, but that these were "impliedly excluded" from the Act's coverage by dint of the Conference Report statements just quoted. From this premise, the Court proceeds to assume that other categories of employees, similarly not excluded under the express terms of the amended definition of "employee," were also impliedly excluded from the Act. In my view, there is no warrant for the assumption that groups of employees, which the statute, or express legislative statements, do not address, are to be excluded from the Act; nor is there any legislative debate whatsoever which can reasonably be construed as expressing an authoritative intent to exclude managerial employees as a class.

The Conference Committee Report explains that the Act was not amended expressly to exclude labor relations and confidential employees from coverage under the Act, because it was already prevailing Board practice to exclude these employees. This was not an entirely accurate representation of Board practice, which seemed to

hold only that such employees should not be included in rank-and-file bargaining units, and not necessarily that they would have no protections under the Act, see, *e. g.*, *Murray Ohio Mfg. Co.*, 61 N. L. R. B. 47 (1945); *Ford Motor Co.*, 66 N. L. R. B. 1317 (1946), but even accepting the Conference Report as an authoritative direction that these workers were not to be considered employees within the meaning of § 2, it does not follow that other groups of employees, regarding whom no such explicit direction was set forth and whom the Board had not treated in such a manner, were also intended to be excluded. The Conference Committee implied that certain groups of employees were to be excluded, but it also noted that some time-study personnel could qualify as professional employees and could therefore organize in units which a majority of them approved, and that guards were not wholly excluded from the Act, but were restricted to units composed solely of other guards. § 9 (b), 29 U. S. C. § 159 (b). Given that Congress made specific provision for time-study and plant protection employees, who were to be entitled to bargaining rights, and that it expressed a desire to exclude only labor relations and confidential employees whom it thought the Board had previously held outside the Act, there is no reason to suppose from the further congressional silence that special provisions, whether of inclusion or exclusion, were intended with respect to other categories of employees. If it be argued that the absence of any express treatment of managerial employees by Congress was somehow intended to codify prior Board practice, then the unavoidable fact is that Board decisions had not held that managerial employees were unprotected by the Act. They had only been excluded from rank-and-file bargaining units. Moreover, there is no indication in the legislative history as to what

Congress might have perceived the Board's rule to be with respect to managerial employees as a class.[2]

Nor is the Court's position much advanced by the few passing references in the House Report and in the floor debates, which the Court cites, *ante*, at 283, and nn. 12 and 13, for the assumption that "executives" would be excluded from the Act apart from whether they were confidential employees or not, and for the discussion of supervisors as representatives of management whom the amendments sought to exclude. In none of the cited passages was the category of "managerial employees," as the Board had defined it, ever addressed, and the focus of these remarks is clearly directed at the exclusion of supervisors as defined in the proposed amendments. Perhaps it was clear to Congress that a confidential secretary's superior would be excluded by the Act, but such an individual would either be a confidential employee himself, or a supervisor, or both. We are referred to

[2] The majority argues that "no explicit exclusionary provision was necessary in 1947 because the Board had never approved the organization of 'managerial employees' in either a separate unit or as part of a rank-and-file unit." *Ante*, at 284–285, n. 13. It does not dispute, however, that the Board had never disapproved their organization either, and admits that the Board had stated in *Dravo Corp.*, 54 N. L. R. B. 1174 (1944), that by excluding buyers from a clerical employees unit it did not mean to say they would be denied bargaining rights under the Act. The Board had not held managerial employees excluded prior to 1947, and Congress did not address itself to the class of "managerial employees" by that term or by reference to the Board's definition. There is, therefore, no justification for excluding from the statutory designation of "any employee" an entire class that the Board had not previously excluded and that Congress did not expressly deal with in its amendments to the Act or in the legislative materials surrounding their adoption. If Congress had intended to exclude managerial employees, it would have said *something* about them, since it took such great pains to discuss supervisors and labor relations, confidential, time-study, and plant protection employees.

nothing in the debates or other congressional materials where the category of managerial employees, as distinguished from the class of supervisory employees, a distinction the Board had previously drawn, is discussed.[3]

Finally, if we are to consider the 1947 amendments as intending to enact the views of the dissenting Justices in *Packard*, it should be noted that the dissent interpreted the National Labor Relations Act to "put in the employer category all those who acted for management not only in formulating but also in executing *its labor policies.*" 330 U. S., at 496. (Emphasis supplied.) See also *id.*, at 500. Limiting the exclusion of managerial employees to those who are charged with the formulation or implementation of labor relations policies, as the Board has now done in the case before us, is

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[3] The majority expresses concern that extending organizational and bargaining rights to managerial employees would permit the extension of the Act to vice presidents and other high level executives, thereby blurring the distinction between management and labor. The concern is overblown; for most, if not all, executives will obviously be "super" supervisors, confidential employees, professionals or within the Board's definition of those employees whose organization would result in a conflict of interest with respect to the company's labor policies. If there are remaining executives outside these categories who should also be excluded, the Board should be told to exclude that particular group, rather than to exclude the managerial class that would reach not only vertically, but laterally, to deny "hundreds of thousands," 475 F. 2d 485, 496, of buyers and other relatively low-level management employees the organizational benefits and other protections of the Act otherwise available to "any employee."

To argue, as the majority does, that had Congress intended to include managerial employees, it would have said so expressly, ignores the fact that the Act covers "any employee" and that the burden properly falls on those who would exclude managerial employees to demonstrate that it was the intent of Congress to exclude this category when it legislated directly to exclude supervisory employees.

entirely consistent with this view and with the purposes of the Act. As the Senate Report noted, its concern in changing the law with respect to supervisory employees, as construed by *Packard*, was that the balance of power in the collective-bargaining process had been upset by "the successful efforts of labor organizations to invoke the Wagner Act for covering supervisory personnel, traditionally regarded as part of management, into organizations composed of or subservient to the unions of the very men they were hired to supervise." S. Rep. No. 105, 80th Cong., 1st Sess., 3 (1947). See also H. R. Rep. No. 245, 80th Cong., 1st Sess., 13 (1947); 93 Cong. Rec. 3553. Where an employee may be deemed managerial because of the nature of his duties apart from supervision of other employees, however, there is no reason to suppose that union affiliation, at least in separate units, would raise the same labor relations concern.

Following the Taft-Hartley amendments in 1947, the Board continued to hold, as it had frequently held before, that buyers, and others with managerial interests, were to be excluded from bargaining units of other employees. *Denver Dry Goods*, 74 N. L. R. B. 1167 (1947); *Palace Laundry Dry Cleaning*, 75 N. L. R. B. 320 (1947); *Denton's, Inc.*, 83 N. L. R. B. 35, 37 (1949); *Wise, Smith & Co.*, 83 N. L. R. B. 1019, 1021 n. 6 (1949); *Westinghouse Electric Corp.*, 89 N. L. R. B. 8, 14 (1950). But in 1950, in *American Locomotive Co.*, 92 N. L. R. B. 115, 117, the Board, in rejecting the inclusion of buyers in an office and clerical employees unit or their placement in a separate bargaining unit, said that "[a]s it appears that the buyers are authorized to make substantial purchases for the Employer, we find that they are representatives of management, and as such may not be accorded bargaining rights under the Act." Reliance for this

statement was placed on the *Wise, Smith* and *Westinghouse Electric* cases which involved the appropriateness of placing the managerial employees in a particular bargaining unit. In *Swift & Co.*, 115 N. L. R. B. 752 (1956), the Board held that a proposed unit of procurement drivers could not be accorded bargaining rights, even in a separate unit. There, the Board flatly asserted that it was "the clear intent of Congress to exclude from the coverage of the Act all individuals allied with management." *Id.*, at 753–754. The sole support for this statement, which the Board has now repudiated, was a reference to the statutory definitions of "employee" and "employer" and to the Conference Committee Report's explanation of the term "supervisors," as quoted above and reprinted in the Congressional Record.

The Board continued to exclude managerial employees from bargaining units of other employees thereafter, occasionally citing *Swift, e. g., Copeland Refrigeration Corp.*, 118 N. L. R. B. 1364, 1365 n. 2 (1957); *AFL–CIO*, 120 N. L. R. B. 969 (1958), but more frequently excluding managerial employees from particular units without citing that case or suggesting that the excluded workers were not protected employees. *Mack Trucks, Inc.*, 116 N. L. R. B. 1576, 1577–1578 (1956); *Diana Shop*, 118 N. L. R. B. 743, 745 (1957). *E. g., Federal Tel. & Radio Co.*, 120 N. L. R. B. 1652, 1654 (1958); *Kearney & Trecker Corp.*, 121 N. L. R. B. 817, 822 (1958); *Weaver Motors*, 123 N. L. R. B. 209, 216 (1959); *Eastern Camera & Photo Corp.*, 140 N. L. R. B. 569, 572 (1963).

Until the Board overruled *Swift* in *North Arkansas Electric Cooperative, Inc.*, 185 N. L. R. B. 550 (1970), it had thus actually held only twice that managerial employees could not be afforded protection under the Act, and its support for that conclusion was without any persuasive appeal. It is true, of course, that the Board had not held to the contrary either, and that

various courts of appeals interpreted and deferred to the Board's position as one of total exclusion of managerial employees from the scope of the Act, although in none of these cases was that conclusion necessary to the result reached. But the Board has now rejected this broad exclusion, and the question is whether the current view should be sustained. That the Board now refuses to follow its prior precedents is no reason to overturn it, for we have frequently sustained Board decisions overruling its prior interpretations of the Act. *E. g., Golden State Bottling Co.* v. *NLRB*, 414 U. S. 168 (1973); *Packard Co.* v. *NLRB*, 330 U. S. 485 (1947). And the face of the Act and the events of 1947 demonstrate that the Board's present decision is a permissible construction of the statute.

Nor did Congress in 1959, when it again amended the statute, expressly or impliedly enact or approve the statutory interpretation announced in *Swift & Co.* The 1959 amendments dealt with secondary boycotts and picketing, and we are cited to nothing suggesting that the attention of Congress at that time was directed to or focused on the question whether managerial employees were covered or excluded in the statute. Congressional silence does not imply legislative approval of all Board rulings theretofore made. As the Court noted in *Boys Markets* v. *Retail Clerks Union*, 398 U. S. 235, 241-242 (1970), which overruled *Sinclair Refining Co.* v. *Atkinson*, 370 U. S. 195 (1962):

> "Nor can we agree that the conclusive weight should be accorded to the failure of Congress to respond to *Sinclair* on the theory that congressional silence should be interpreted as acceptance of the decision. The Court has cautioned that '[i]t is at best treacherous to find in congressional silence alone the adoption of a controlling rule of law.' *Girouard* v.

United States, 328 U. S. 61, 69 (1946). Therefore, in the absence of any persuasive circumstances evidencing a clear design that congressional inaction be taken as acceptance of *Sinclair*, the mere silence of Congress is not a sufficient reason for refusing to consider the decision."

See also *Commissioner* v. *Glenshaw Glass Co.*, 348 U. S. 426, 431 (1955). Similarly, from the congressional silence in 1959 concerning *Swift's* exclusion of managerial employees from the protection of the Act, it should not be assumed that Congress intended to approve of *Swift* and foreclose the possibility of the Board's reconsidering *Swift* and overruling it on further and more examining reflection. *NLRB* v. *Seven-Up Co.*, 344 U. S. 344, 350–352 (1953).

The Board's decisions in this area have not established a cohesive and precise pattern of rulings. It is often difficult to tell whether an individual decision is based on the propriety of excluding certain employees from a particular bargaining unit or whether the worker under consideration is thought to be outside the scope of the Act. But this Court has consistently said that it will accept the Board's determination of whether a particular individual is an "employee" under the Act if that determination "has 'warrant in the record' and a reasonable basis in law." *NLRB* v. *Hearst Publications, Inc.*, 322 U. S. 111, 131 (1944); *NLRB* v. *United Insurance Co.*, 390 U. S. 254, 260 (1968). There is no reason here to hamstring the Board and deny a broad category of employees those protections of the Act which neither the statutory language nor its legislative history requires simply because the Board at one time interpreted the Act—erroneously it seems to me—to exclude all managerial as well as supervisory employees.

I respectfully dissent.